

**ENHANCING LEGAL PEDAGOGY IN  
UNDERGRADUATE LEGAL EDUCATION:  
TEACHING ETHICS, PROFESSIONALISM AND  
CRITICAL REFLECTION TO LAW STUDENTS FROM  
THE FOUNDATION YEAR OF LAW**

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Submitted for fulfilling the requirements of a Doctorate in the Philosophy of Law

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Signed: Sarah-Jane Hiller

Date: 9. 8.16

## **Dedication**

This thesis is dedicated to my now deceased Aunt and Godmother Andrea Pentecost, whose input, encouragement of attention to detail throughout the process were inspirational.

## **Acknowledgements**

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## **Abstract**

This thesis examines the importance of law students developing an understanding of ethics, professionalism and critical reflection from the beginning of tertiary legal education. The thesis shows why, when and how these areas need to be developed. Findings of the research aim to provide legal educators with a toolbox of pedagogical techniques for teaching law students about ethics, professionalism and critical reflection. It suggests areas for further research. The findings of this research can be used by law faculties to embed Threshold Learning Outcomes (TLOs) relating to the areas of ethics, professionalism and critical reflection into legal curriculums to enhance both and accountability to government, the legal profession and the public.

The academic literature demonstrates significant ongoing concerns relating to unethical and unprofessional behaviour within the legal profession, the ethical standards required for legal practice and the positive role upholding ethics and professionalism can have for legal practice and promoting social justice. The thesis argues that ethics and professionalism should be taught pervasively from the foundation year through the legal curriculum. Less traditional pedagogical techniques such as the use of popular culture, group work and courtroom experiences are supported to supplement traditional lectures and tutorials.

The thesis examines critical reflection in higher education in order to guide and instruct foundation law students about the importance of critical reflection as a legal skill. A multi-disciplinary literary review of reflective journaling is provided, demonstrating that the use of journaling is becoming increasingly popular as an effective pedagogical technique, well suited to legal education. The review also shows that other pedagogical techniques can be supplemented with reflective journaling. The positive impact of using interventionist strategies such as guidance, feedback and instruction in the improvement in the structure and depth of critical reflection are revealed. The thesis suggests there is not a dominant reflective model used in the foundation year of legal education. This research, informed by the academic literature therefore develops a cyclical prompt-based model of critical reflection.

The research involves an analysis of foundation students' reflective journal texts, from 2009 and 2011 at the University of Tasmania, using constructivist grounded theory and discourse analysis. The analysis reveals what engages and challenges foundation law students, how they like to improve their legal knowledge and skills, the influence of court experiences and popular culture and students' views of ethics and professionalism. The research informed by the academic literature makes a contribution to the development of legal pedagogy in the areas of ethics, professionalism and critical reflection.

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# **CHAPTER 1: ETHICS, PROFESSIONALISM AND CRITICAL REFLECTION IN LEGAL EDUCATION: RESEARCH FOCUS, RESEARCH AIMS AND RESEARCH QUESTIONS**

## **I INTRODUCTION**

Ethics, professionalism and critical reflection are crucial aspects of legal education given they are integral to the Threshold Learning Outcomes (TLOs)<sup>1</sup> for Australian law graduates and are essential for legal practice.<sup>2</sup> The definitions of ethics, professionalism and critical reflection are explored in each relevant literature review chapter together with the rationale behind their inclusion within legal education. In relation to this thesis, students undertaking introduction to law subjects in their first year at university are defined as foundation year law students. The reason is that first year university students at the University of Tasmania (UTAS), where the research is conducted, are required to undertake introduction to law subjects whilst enrolled in another faculty. The three year higher achiever law degree at UTAS also requires students to undertake foundation year. Entry to first year law at UTAS does not commence until the second year of university. This thesis provides both traditional and less traditional, more engaging pedagogical techniques for law students in these areas including a cyclical, prompt-based model to assist foundation law students with critical reflection.<sup>3</sup> Traditionally, in legal education law lecturers and tutors are the main contributors to lectures and tutorials.<sup>4</sup> Group learning, guest lecturers, analysis of popular culture, role-play, debates, critical reflection on self-learning and real world court observations are less traditional legal pedagogical techniques.<sup>5</sup>

The thesis has four central arguments. Firstly, it argues for the importance of the inclusion of ethics, professionalism and critical reflection in the undergraduate legal curriculum. Secondly, it argues for the inclusion of ethics and professionalism from the foundation year in a variety of ways, both traditionally and less traditionally. Thirdly, the teaching of critical reflection in legal education is improved when there is guidance, instruction, direction, practice and feedback given to students.<sup>6</sup> Educators can constructively align learning

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<sup>1</sup> Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com>> TLO1 (includes knowledge of principles and values of justice and of ethical practice in lawyers' roles), TLO2 (includes ethics, professional responsibility and reflection) and TLO 6 (includes self-management and reflection). See also TLO2 (including ethics and professional responsibility and skills of reflection) in the Juris Doctor TLOs, endorsed by the Council of Law Deans, March 2012 <<http://www.cals.asu.au>> but not covered in this thesis.

<sup>2</sup> See Chapter 2 III A; Chapter 4 II A.

<sup>3</sup> Chapter 9, Figure 1; Chapter 9, Table 1; Chapter 9, Table 2.

<sup>4</sup> Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011), Preface.

<sup>5</sup> See Table 1, Recommendation 1.

<sup>6</sup> Sally Kift, '21<sup>st</sup> Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1; Kelley Burton and Judith McNamara, 'Assessing Reflection Skills in Law using Criterion-referenced Assessment' (2009) 19 *Legal Education Review* 171, 178; John Biggs and Catherine Tang, *Teaching for Quality Learning at University—What the Student Does* (McGraw Hill, 4<sup>th</sup> ed, 2011) 28-29.

outcomes and techniques. Fourthly, reflective journals assist educators to scrutinise the discourses, which are constructed from the students' journal texts facilitating insights and improvements towards a more enriching, engaging legal pedagogy. This also allows educators to be more critically reflective about their own practices given that they are able to view the legal education landscape through students' first person perspectives.<sup>7</sup>

This chapter outlines the nature of the research and why it is important for government, universities, legal educators, the legal profession and law students.<sup>8</sup> It recommends that legal educators include both traditional and less traditional pedagogical techniques to teach ethics, professionalism and critical reflection.<sup>9</sup> The research focus,<sup>10</sup> aims of the research<sup>11</sup> and the theoretical location of the research are explored.<sup>12</sup> The chapter also examines the iterative nature of the formation of the research objectives and research questions.<sup>13</sup> This is followed by summary of the literature review chapters relating to ethics, professionalism and critical reflection.<sup>14</sup> The methodology of the thesis used takes account of the researcher's contributions as both a former senior legal practitioner and an experienced legal educator in foundation law subjects.<sup>15</sup> The chapter concludes with an outline of the key sections of the chapters showing how they address the research objectives and questions.<sup>16</sup>

## II THE NATURE OF THE RESEARCH: COMMITMENT TO ETHICS, PROFESSIONALISM AND CRITICAL REFLECTION

The analysis of the reflective journal data in this research provides insights into what inspires, engages, motivates and influences two groups of foundation law students in 2009 and 2011 at UTAS. It reveals their perspectives of the legal world and learning about the law. The research data is informed by comprehensive literature reviews in the areas of ethics, professionalism, critical reflection and reflective journaling as a form of critical reflective practice.<sup>17</sup> The key research approaches include the use of constructivist grounded theory<sup>18</sup>

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<sup>7</sup> Stephen Brookfield, *Becoming a Critically Reflective Teacher* (Wiley, 1995) Preface.

<sup>8</sup> Chapter 1 II; See also Kift et al, above n 4, Preface.

<sup>9</sup> Chapter 1 III; Chapter 1, Table 1.

<sup>10</sup> Chapter 1 IV.

<sup>11</sup> Chapter 1 V.

<sup>12</sup> Chapter 1 VI.

<sup>13</sup> Chapter 1 VII.

<sup>14</sup> Chapter 1 VIII; Chapter 1 IX.

<sup>15</sup> Chapter 1 X.

<sup>16</sup> Chapter XII.

<sup>17</sup> Chapter 2 I-V; Chapter 3 I-V; Chapter 4 I-III; Chapter 5 I-VI.

<sup>18</sup> Kathy Charmaz, *Constructing Grounded Theory* (Sage, 2006); Kathy Charmaz, 'A Constructivist Grounded Theory Analysis of Losing and Regaining a Valued Self' in Frederick Wertz et al (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (Guilford Press, 2011) 165; Kathy Charmaz, 'Grounded Theory Methods in Social Justice Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> ed, 2011) 359; Chapter 6 III; Chapter 6 IV; Chapter 6 V; Chapter 6 VI; Chapter 7 I-VI.

and a discourse analysis<sup>19</sup> using the law students' reflective journals. Two sets of student discourses are constructed from the 2009 and 2011 cohorts. Accordingly, discourse revelations assist in developing understandings about pedagogy and support the use of less traditional legal pedagogical techniques.<sup>20</sup> Such discourses also reveal the powerful influences of popular culture, the judiciary and the legal educator on students.

The government, universities, the legal profession and the work of researchers show a commitment to improving ethics and professionalism in Australian legal practice.<sup>21</sup> Ethics and professional responsibility, for example, have been incorporated into TLO1 and TLO2.<sup>22</sup> The Australian Learning and Teaching Council in the Bachelor of Laws Learning and Academic Teaching Standards Statement published the TLOs.<sup>23</sup> The research and literature reviews in this thesis investigate how and why these subjects should be taught from the foundations years and what pedagogical techniques are likely to be engaging and effective.<sup>24</sup>

Reflection on ethical and professional responsibilities in practice and for social justice reasons are emphasised in the wording of TLO2.<sup>25</sup> Embedding legal skills within legal curricula<sup>26</sup> is well recognised as legal education moves forward to be 'more relevant, diverse, integrated, innovative, outcome focused, evidence based, technology driven and connected to the practice of law'.<sup>27</sup>

### III RECOMMENDATIONS FOR LEGAL EDUCATORS WHEN TEACHING ETHICS, PROFESSIONALISM AND CRITICAL REFLECTION

This investigation is set against a background of evolving legal education programs, where law schools are moving away from traditional methods of teaching towards less traditional, more student-centred pedagogical techniques, including the use of reflective journal writing.<sup>28</sup> This research examines the topics of ethics and professionalism and whether they can be effectively taught to students using less traditional pedagogical techniques, including via

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<sup>19</sup> Martyn Descombe, *The Good Research Guide for Small-Scale Social Research Projects* (Open University Press, 3<sup>rd</sup> ed, 2007) 308; Gunther Kress, *Linguistic Processes in Sociocultural Practice* (Oxford University Press, 1989); Gunther Kress, 'Discourse Analysis and Education: A Multimodal Social Semiotic Approach' in Rebecca Rogers (ed), *An Introduction to Critical Discourse Analysis in Education* (Routledge, 3<sup>rd</sup> ed, 2011); Chapter 6 VIII; Chapter 8 1-V.

<sup>20</sup> Chapter 8 II-IV; Brookfield, above n 7, 94.

<sup>21</sup> See, eg, Michael Robertson, 'Embedding 'Ethics' in Law Degrees' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 100.

<sup>22</sup> Kift, Israel and Field, above n 1.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al, *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 13; David Weisbrot in Kift, Israel and Field, above n 1, 16.

<sup>26</sup> Eugene Clarke, 'Looking Forward: Challenges Facing Legal Education in the 21<sup>st</sup> Century' (2010) 3 *Phoenix Law Review* 461, 463.

<sup>27</sup> Ibid 471.

<sup>28</sup> Kift, above n 6; Burton and McNamara, above n 6.

reflective journals. Two of the six TLOs for Graduates of the Bachelor of Laws degrees in Australia relate to critical reflection, in turn revealing its importance within legal education.<sup>29</sup> Within these TLOs reflection is linked with ethical issues, the professional responsibilities of lawyers in promoting justice and service to the community together with reflection on personal development.<sup>30</sup> The thesis therefore promotes constructive alignment between the TLOs, teaching/learning activities, assessment tasks and student grading.<sup>31</sup> It also illustrates the importance of embedding ethics and professionalism into foundation law curricula and throughout the degree to demonstrate that these areas are being addressed in tertiary legal education.<sup>32</sup> The thesis provides four recommendations for legal educators in these areas, as set out in Table 1.

**TABLE 1: Recommendations for Legal Educators in Ethics, Professionalism and Critical Reflection and the Rationale for their Inclusion in the Legal Curriculum**

Recommendations	Rationale
Legal educators are recommended to use a pedagogical toolbox of both traditional and less traditional pedagogical techniques. <sup>33</sup>	A variety of pedagogical activities powerfully influence and frequently engage students, particularly with positive and enthusiastic teaching teams. <sup>34</sup> This position shows innovation in legal education. <sup>35</sup>
In relation to reflective journaling legal educators are recommended to include instruction, guidance, practice and feedback together with a written guide to journaling. <sup>36</sup>	Instruction, guidance, practice and feedback are designed to assist students to develop critically reflective skills and can be effectively constructively aligned using a criteria rubric. <sup>37</sup>
A critically reflective prompt-based model is proposed as a means to assist foundation law students with reflection. <sup>38</sup>	A model helps promote relevant elements of critical reflection including experience, analysis, evaluation, contextualisation and transformation. <sup>39</sup>
Legal educators delegated with the responsibility to include TLOs in law schools use current research-led pathways for embedding ethics, professionalism and critical reflection into curricula. <sup>40</sup>	Developing and implementing pathways will conceivably satisfy auditing requirements of and accountability to government in these areas. <sup>41</sup>

<sup>29</sup> Kift, Israel and Field, above n 1; Chapter 4 I-III.

<sup>30</sup> Kift, Israel and Field, above n 1.

<sup>31</sup> Biggs and Tang, above n 6, 109.

<sup>32</sup> Chapter 2 I-V; Chapter 3 I-V.

<sup>33</sup> Chapter 2 I-V, Chapter 3 I-V; Chapter 9, Table 1; Chapter 9, Table 2.

<sup>34</sup> Chapter 9, Table 1; Claire Macken, 'Law Student Engagement: The Curricular and Co-Curricular Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 316-317, 322, 326.

<sup>35</sup> See, eg, Des Butler, 'Technology: New Horizons in Law Teaching' in Kift et al, above n 4, 459.

<sup>36</sup> See, eg, Biggs and Tang, above n 6.

<sup>37</sup> Butler, above n 35; Kift, above n 6.

<sup>38</sup> Chapter 9, Figure 1; Chapter 9; Table 1.

<sup>39</sup> Above n.

<sup>40</sup> Chapter 4 I-III.

<sup>41</sup> Chapter 3 I-V; Chapter 4 I-III; Chapter 5 I-VI; Chapter 9, Table 1; Chapter 9, Table 2.

## IV RESEARCH FOCUS

The following section outlines the thesis structure by tabling the chapters' titles and the type of research methodology or approach underpinning the research described in each chapter. Table 2 shows innovation in terms of research design in that it cuts across four major areas legal education, ethics education in law, foundation law studies and critical reflection inclusive of reflective journaling.

**TABLE 2: Chapter Contents of the Thesis**

<b>Chapter Number and Title</b>	<b>Contents or Type of Research/Approach</b>
<b>Chapter 1: Ethics, Professionalism and Critical Reflection in Legal Education: Research Focus, Aims and Research Questions</b>	Introduction
<b>Chapter 2: The Importance of Ethics and Professionalism in Undergraduate Legal Education</b>	Literature Review - examining the importance of ethics and professionalism in legal education
<b>Chapter 3: Incorporating Ethics and Professionalism into Undergraduate Legal Education from Foundation Year</b>	Literature Review – examining an appropriate pedagogical approach for inclusion of ethics and professionalism in legal education
<b>Chapter 4: Critical Reflection in Legal Education</b>	Literature Review - examining models of critical reflection for legal education
<b>Chapter 5: Analysis of Reflective Journaling in Tertiary Education: Lessons for Legal Education</b>	Literature Review - reflective journaling studies across multiple disciplines, including law
<b>Chapter 6: Research Methodology</b>	Research Methodology
<b>Chapter 7: Using Methods of Constructivist Grounded Theory for Analysis of Foundation Law Students' Reflective Journals</b>	Constructivist Grounded Theory
<b>Chapter 8: Legal Pedagogical Discourses Constructed From Reflective Journal Texts of Foundation Law Students</b>	Discourse Analysis
<b>Chapter 9: Findings about Legal Pedagogy: Pathways for Teaching Ethics, Professionalism and Critical Reflection</b>	Research Findings, Summary and Recommendations

## V AIMS OF THE RESEARCH

The aims of the research are wide reaching, intending to make a contribution to improving Australian legal education in relation to legal ethics, professionalism and critical reflection for law students and their possible future legal careers. Its findings are likely to promote increased public transparency and government accountability in relation to these areas. The aim is to provide legal educators with a range of techniques, that research has proven will

stimulate foundation law students and will enhance their developing perspectives of ethics, professionalism and critical reflection.<sup>42</sup>

The research examines the means to provide foundation law students with clear instruction about critical reflection and constructs a critically reflective prompt-based model for legal education. Critical reflection as a legal skill is important because of its focus on how knowledge can be reflected upon to solve new problems.<sup>43</sup> Increasing cohorts of law academics encourage reflection as a skill necessary for a graduate.<sup>44</sup> While legal educators have proposed reflective models<sup>45</sup> for critical reflection, this thesis develops its own model from the research and adapted from the work of reflective taxonomists.<sup>46</sup>

The research also aims to understand, describe and interpret the students' journal entries in order construct the discourses, which explain student understandings of the legal world. In the reflective journals the students position themselves as not only voyeurs of the legal education world in which they are immersed but as playing a more critically reflective role with their own learning.<sup>47</sup> The development of critical, ethical and professional values can help shape future professional identities, which underpins student decision-making and problem solving.<sup>48</sup> Using a variety of pedagogical techniques directed at improving legal pedagogy also enables students to be more critically involved within their own legal learning environment.<sup>49</sup> The research also provides legal educators with effective pathways for embedding these attributes into the curriculum for their intrinsic value for students, as future legal practitioners and for public and government accountability.<sup>50</sup>

## VI THEORETICAL LOCATION

This research is theoretically located in a constructivist paradigm within a poststructuralist framework.<sup>51</sup> The framework informs the methodology, which uses constructivist grounded theory<sup>52</sup> and discourse analysis.<sup>53</sup> The theoretical location is informed by issues of discourse

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<sup>42</sup> Chapter 9, Figure 1; Chapter 9, Table 1.

<sup>43</sup> Kift, above n 6; Burton and McNamara, above n 6.

<sup>44</sup> Kift, above n 6, Vicki Waye and Margaret Faulkner, 'E-Portfolios and Legal Professional Attributes' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 250; Burton and McNamara, above n 6.

<sup>45</sup> Waye and Faulkner, above n, 250; Mary Ryan and Michael Ryan, *Developing Reflective Approaches to Writing* (2012) <<http://www.qut.edu.au/research>>; Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (ALTC, 2013) <<http://www.lawteachnetwork.org/resources/gpg---reflection.pdf>>.

<sup>46</sup> Chapter 4 I-III; Chapter 7 I-VI; Chapter 8 I-V.

<sup>47</sup> Chapter 8 II C; Chapter 8 III.

<sup>48</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 33-35.

<sup>49</sup> Biggs and Tang, above n 6, 165-168.

<sup>50</sup> Chapter 9, Table 2; Chapter 9, Table 3.

<sup>51</sup> Above n 18.

<sup>52</sup> Above n 18; Chapter 6 III; Chapter 6 IV; Chapter 6 V; Chapter 6 VI; Chapter 7 I-VI.



and power, which operate through an analysis of the data. Such a theoretical positioning recognises that the research is located ‘in a new age where messy, uncertain multi-voiced texts, cultural criticism, and new experimental work will become more common, as will reflexive forms of field work, analysis and inter-textual representation’.<sup>54</sup>

The constructivist paradigm is comprised of multiple realities, knower and respondent co-creating understandings and a naturalistic set of methodological procedures.<sup>55</sup> Poststructuralism, which informs this paradigm, rejects the rigidity of structural formations within society<sup>56</sup> and ‘critiques the scientific pretensions of structural tendencies in all disciplines’.<sup>57</sup> Within this paradigm the discourses are constructed. In relation to this research the foundation law students construct their textual data.<sup>58</sup> The researcher develops discourses using constructivist grounded theory,<sup>59</sup> which involves data collection and analysis reciprocally informing and shaping each other through emergent iterative processes.<sup>60</sup> Constructivist grounded theory involves attending to contexts, positions, meanings, actions and advances the understanding of power and inequities.<sup>61</sup> The strategies are comprised of coding, developing categories and finally identifying the major themes from the data.<sup>62</sup>

The use of a poststructural framework recognises that there is no universal truth derived from data but multiple perspectives of phenomenon.<sup>63</sup> In this research the reading of the data is not constructed as truth but as a site for multiple possibilities based on the discourses, which are constructed from the themes.<sup>64</sup> This posits that discourses are socially, culturally and historically located.<sup>65</sup> Within this research framework the aim is to develop students’ views on legal pedagogy, including ethics, professionalism and critical reflection. Constructivist grounded theory also allows for locating the research in terms of discourse and power.<sup>66</sup> ‘Discourse and writing in particular, is no longer considered merely as a means of transcribing knowledge that is provided in lumps by the teacher’.<sup>67</sup> Learning involves making

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<sup>53</sup> Above n 19; Chapter 6 VIII; Chapter 8 I-V.

<sup>54</sup> Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage, 4th ed, 2011) 15.

<sup>55</sup> Ibid 13.

<sup>56</sup> Elizabeth Adams St. Pierre ‘Post Qualitative Research’ in Denzin and Lincoln, above n 54, 615.

<sup>57</sup> Ibid.

<sup>58</sup> Chapter 7 I-VI; Chapter 8 I-V.

<sup>59</sup> Above n 18.

<sup>60</sup> Ibid.

<sup>61</sup> Charmaz (2006), above n 18, 362; Chapter 6 III; Chapter 7.

<sup>62</sup> Charmaz (2006), above n 18, 367, 368, 371; Chapter 6 III; Chapter 7 II-V.

<sup>63</sup> Denzin and Lincoln, above n 54, 9.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid 364-365.

<sup>66</sup> Above n 20.

<sup>67</sup> Susan DeJarnatt, ‘Law Talk: Speaking, Writing, and Entering the Discourse of Law’ (2002) 40 *Duquesne Law Review* 489, 494.

sense out of experiences where both teachers and students are making and sharing meanings.<sup>68</sup>

Society is differentiated into many types of power relationships; different groups push their own power by claiming they have knowledge of the truth.<sup>69</sup> The research shows how power influences students.<sup>70</sup> This thesis maintains that legal discourse analysis is understudied.<sup>71</sup> Analysis is needed, in relation to the ‘spoken and written texts ... not purely for scholarly reasons but in the interests of fairness and justice’,<sup>72</sup> given ‘the enormous power of institutionalised and structural superiority’<sup>73</sup> the law has in conflict with ‘the views of fairness held by ordinary citizens’.<sup>74</sup> In the context of this research, power is asserted through specialised knowledge by key figures or institutions, the judiciary over those within in the courtroom, the students through judgments, legal educators over the students and popular culture over the law students. Brookfield recognises that ‘students perceptions are especially helpful to us when it comes to surfacing issues of power’<sup>75</sup> in relation to learning. One way this can be achieved is through reflective journals.<sup>76</sup>

## VII THESIS OBJECTIVES AND RESEARCH QUESTIONS

The initial objective of the research involved an assessment of whether reflective journaling was a suitable innovative pedagogical tool for teaching foundation law students about ethics and professionalism. As it became clear early in the process of reviewing the literature that such a pedagogical device had potential, the research objectives and questions were expanded. The importance of instructing and guiding students in relation to reflection also became apparent together with the recognition that a reflective model for foundation law students could be developed to direct and guide students with reflection.<sup>77</sup> It also became evident that the student journals reveal a great deal about the legal world of the law students through their discourses.<sup>78</sup> The research objectives were therefore reviewed, revised and expanded in light of initial research findings. The new objectives include why to, how to and when to promote and enhance the development of ethics, professionalism and critical reflection. The following research questions inform the thesis:

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<sup>68</sup> Ibid.

<sup>69</sup> Ben Wadham, Jason Pudsey and Ross Boyd, *Culture and Education* (Pearson Education, 2007) 27.

<sup>70</sup> Chapter 7 II-IV; Chapter 8 II-IV; Chapter 9, Figure 1; Chapter 9, Table 1.

<sup>71</sup> Edward Finigan, ‘Discourses in the Language of Law’ in James Paul Gee and Michael Handford (eds), *The Routledge Handbook of Discourse Analysis* (Routledge, 2013) 482.

<sup>72</sup> Ibid 492.

<sup>73</sup> Ibid 483.

<sup>74</sup> Ibid.

<sup>75</sup> Brookfield, above n 7, 94.

<sup>76</sup> Ibid 97.

<sup>77</sup> Chapter 4 I-III; Chapter 5 V.

<sup>78</sup> Chapter 8 II-IV.

1. Why, how and when should ethics and professionalism be taught to law students?
2. Why is and what components of critical reflection are relevant to law students' legal education?
3. What is an appropriate model for critical reflection for foundation law students?
4. Is reflective journaling a suitable pedagogical technique for foundation students' learning about ethics and professionalism?
5. What does an analysis of foundation law students' journals reveal in terms of legal pedagogy?

Recommendations also issue to legal educators in the form of a toolbox of pedagogical techniques for ethics, professionalism and critical reflection for the foundation year and beyond. Additional recommendations are made for areas of further research together with activities for the teaching of ethics, professionalism and critical reflection.

## VIII LITERATURE REVIEWS: ETHICS AND PROFESSIONALISM IN THE UNDERGRADUATE LEGAL CURRICULUM FROM FOUNDATION YEAR

Chapter 2, the first literature review chapter, argues that in the present socio-economic climate the teaching of legal ethics and professionalism in the undergraduate legal curriculum is essential.<sup>79</sup> The intense demand for inclusion of these topics within the undergraduate legal curriculum derives from governments, universities and within the legal profession.<sup>80</sup> The academic literature shows possibilities that both traditional and more so, less traditional, student-centred pedagogical techniques have in this area.<sup>81</sup> Chapter 3 argues for inclusion of both a 'pervasive model'<sup>82</sup> to incorporate ethics and professionalism into the legal curriculum, allowing multiple opportunities for student learning.<sup>83</sup> The benefits of early incorporation in the foundation years of a law degree encourage the development of skills needed within the profession but also have important implications for educators in terms of compliance with

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<sup>79</sup> Robertson, above n 21, 99, 107; James and Field, above n 48, 436, 437; Frank Armer, 'The Teaching of Ethics in Australian Law Schools' (1998) 16 *Journal of Professional Legal Education* 247, 248; Chapter 2 II-IV.

<sup>80</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Justice System*, Executive Summary, Report No 89 (1999) <<http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>>; Suzanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving And Sustaining Excellence In A Changed And Changing Environment* (Australian Learning and Teaching Council, 2009); Discipline Standards in Australia <<http://disciplinestandards.pbworks.com>>; Kift, Israel and Field, above n 1; Chapter 2 I-IV.

<sup>81</sup> Julian Webb, 'Taking Values Seriously: The Democratic Intellect and the Role of Values in the Law School Curriculum' in Mike Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 9, 22; Chapter 2 III-VI.

<sup>82</sup> Russell Peace, 'Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School' (1998) 29 *Loyola University Chicago Law Journal* 719; Gonzalo Puig, 'Legal Ethics in Australian Law Schools' (2008) 42 *Law Teacher* 29; Lauren Solberg, 'Reforming the Legal Ethics Curriculum: A Comment on Edward Rubin's "What's Wrong with Langdell's Method and What to Do About It?"' (2009) 62 *Vanderbilt Law Review* 12; Chapter 3 I-IV.

<sup>83</sup> Owen and Davis, above n 80; Webb, above n 81; Chapter 3 I-IV.

government standards.<sup>84</sup> Literature from the United States and Australia<sup>85</sup> reveals the student-centred pedagogical tools to support and enhance student learning about ethics and professionalism.<sup>86</sup> Using a diversity of pedagogical techniques has significant merit in terms of student engagement and learning.<sup>87</sup>

## IX LITERATURE REVIEWS: CRITICAL REFLECTION AND REFLECTIVE JOURNALING

Chapter 4 reviews the literature on critical reflection for the purpose of legal education. Reflective skills are shown as essential graduate attributes and part of the TLOs.<sup>88</sup> The chapter examines the multiple views surrounding critical reflection and explores the ambiguous nature of reflection and the interchangeable terms associated with it.<sup>89</sup> It outlines how critical reflection can be developed from an academic perspective, with components of reflective taxonomies appraised and assessed.<sup>90</sup> The chapter also reviews the field chronologically from the work of Dewey<sup>91</sup> to the more recent work of other academics<sup>92</sup> in order to assess which components of critical reflection are best suited to foundation legal education.

Chapter 5 presents an inquiry about reflective journaling studies across different professional disciplines, from a number of mainly common law countries.<sup>93</sup> Findings relevant to inform the research are revealed and explained. Findings from all phases of the study are used to inform the research, revealing that if certain criteria are met, reflective journaling has the potential to be a highly appropriate pedagogical technique.

## X RESEARCH METHODOLOGY

Chapter 6 details the design of the research methodology through a review of the theory behind the methodological choices made for the research and how those methods of analysis, including the collection of the data, were put into practice.<sup>94</sup> The advantages of constructivist

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<sup>84</sup> Deborah Rhode, 'Ethics by the Pervasive Method' (1992) 42 *Journal of Legal Education* 31; Deborah Rhode, *The Trouble with Lawyers* (Oxford University Press, 2015) 142.

<sup>85</sup> See, eg, Johnstone, above n 25, 8-10; Michael Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 3; Kieran Tranter et al (eds), *Re-Affirming Legal Ethics: Taking Stock and New Ideas* (Routledge, 2010) 5-6.

<sup>86</sup> Chapter 5 I-VI.

<sup>87</sup> Owen and Davis, above n 80.

<sup>88</sup> Chapter 4 I; Chapter 4 II A.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> John Dewey, *Experience and Education* (Collier MacMillan, 1938); Clarke, above n 26, 463; Chapter 4 III A.

<sup>92</sup> Chris Bulman and Sue Schutz, *Reflective Practice in Nursing* (Wiley-Blackwell, 2013); Chapter 4, Table 1; Chapter 4, Table 2; Chapter 4, Table 3.

<sup>93</sup> Chapter 5 I-V.

<sup>94</sup> Chapter 6 II-VIII.

grounded theoretical and discourse analysis are explained and examined.<sup>95</sup> Data from two groups of foundation UTAS law students, chosen from 2009 and 2011, is used to give insight into the students' perspectives. The reflective journals provide the rich data, which reveals the legal world of foundation students. The issues of reliability, credibility and triangulation are addressed in the research.<sup>96</sup> The strengths of using a constructivist grounded theoretical approach to examining the students' textual data are also revealed.

Chapter 7 details the method of analysis of foundation law students' reflective journal texts using constructivist grounded theory.<sup>97</sup> The chapter outlines the processes of constructivist grounded theory used to analyse the data. These include coding, categorising and constructing the dominant themes from the data. Memo writing is used to show how the researcher reflected on improving both pedagogy and reflection. This process was completed in preparation for the discourse analysis to follow in Chapter 8, which compares and contrasts discourses constructed from foundation law students' reflective journals<sup>98</sup> in 2009 and 2011. Five discourses for the 2011 cohort include student engagement, thinking like a lawyer, court experience, ethics and judgment. Six discourses from 2009 are constructed and are similar to the 2011 discourses. They include engagement, improvement, popular culture, court experience, analysis and judgement.

## XI FINDINGS OF THE RESEARCH

Chapter 9 presents the findings of the research, informed by the literature reviews, which focus on specifically designed activities<sup>99</sup> to promote ethics, professionalism and critical reflection. A written journaling guide to assist law students with reflection is recommended.<sup>100</sup> The findings also support the desirability of a model of critical reflection to assist foundation law students improve their reflective skills. The chapter summarises what can be learned and utilised from the research in terms of contributions made to knowledge and practice in legal education in relation to ethics, professionalism and critical reflection.<sup>101</sup> The research questions are revisited showing how the research informed by the literature reviews addresses the research questions. The chapter tables the major findings of the discourse analysis providing recommendations for legal pedagogy.

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<sup>95</sup> Chapter 6 III; Chapter 6 VII.

<sup>96</sup> Chapter 6 VI.

<sup>97</sup> Above n 19.

<sup>98</sup> 2011 journals come from Hobart, Launceston and Cradle Coast campuses. 2009 journals come from the Hobart campus.

<sup>99</sup> Chapter 9, Table 2; Chapter 9, Table 3.

<sup>100</sup> Chapter 6, Table 3.

<sup>101</sup> Chapter 9 III; Chapter 9, Table 2; Chapter 9, Table 3; Chapter 9 IV C.

In terms of extending legal research in the area, options are also tabled relating to further engaging pedagogical techniques, extending constructivist grounded theory and discourse analysis with reflective practice. The chapter outlines the implications of the research for legal educators, student development in these areas, legal researchers and those charged with the responsibility for mapping out and embedding graduate attributes into the curriculum.<sup>102</sup>

## XII CONCLUSION

This chapter introduces the importance of ethics, professionalism and critical reflection in legal education for law students throughout their degrees, as graduates and future professionals. These topics form the research focus and relate to the objectives and aims of the research. The research focus also relates to a careful examination of the student journals of cohorts of 2009 and 2011 and foreshadows how this has been done. Through the research process it shows the development of discourses, which provide insights into what engages and influences students. The research in this thesis provides legal educators with techniques to embed TLOs<sup>103</sup> relating to ethics, professionalism and critical reflection into curricula. It shows legal education can be developed in the areas of ethics and professionalism from the foundation years. It also shows critical reflection is a central component of the research given it involves reflective journals, reflective practice and analysis of journal texts. The research from the journals has important ramifications for developing the teaching of ethics, professionalism and critical reflection in both traditional and less traditional, more innovative ways.

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<sup>102</sup> Ibid.

<sup>103</sup> Kift, Israel and Field, above n 1.

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## CHAPTER 2: THE IMPORTANCE OF ETHICS AND PROFESSIONALISM IN UNDERGRADUATE LEGAL EDUCATION

### I INTRODUCTION

This chapter argues that the teaching of ethics and professionalism in the undergraduate legal curriculum is essential.<sup>1</sup> Ethics and professionalism are defined broadly as a notion of professional ethical conduct, which emphasises values, as opposed to prescriptive rules of behaviour.<sup>2</sup> This definition focuses on professional skills as well as legal knowledge.<sup>3</sup> The demand for inclusion of ethics and professionalism within the undergraduate legal curriculum comes from government, universities and the legal profession.<sup>4</sup> This chapter presents the positive possibilities that both traditional and more so, less traditional pedagogical techniques have in this area. Less traditional legal pedagogy supports student-centred learning, allowing students to construct their own critically reflective perspectives, which traditional transmission of legal knowledge on its own may be less likely to deliver.<sup>5</sup>

The first section of the chapter recognises the significance of prioritising ethics and professionalism in legal education for two reasons. Firstly, there is a growing concern about the unethical behaviour of legal practitioners,<sup>6</sup> deriving from the judiciary, the legal profession, academia and the community.<sup>7</sup>

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<sup>1</sup> Michael Robertson, 'Embedding "Ethics" in Law Degrees' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 99, 107; Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 436-437; Frank Armer, 'The Teaching of Ethics in Australian Law Schools' (1998) 16 *Journal of Professional Legal Education* 247-248.

<sup>2</sup> Robertson in Kift et al, above n, 107.

<sup>3</sup> Paula Baron and Lillian Corbin, 'Thinking Like a Lawyer/Acting like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education' (2012) 46 *The Law Teacher* 103; William Sullivan et al, *Educating Lawyers* (Wiley, 2007); Ainslie Lamb, John Littrich and Katrina Murray, *Lawyers in Australia* (Federation Press, 2015) 217.

<sup>4</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Justice System*, Executive Summary, Report No 89 (1999) <<http://www.austlii.edu.au>>; Suzanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving And Sustaining Excellence In A Changed And Changing Environment* (Australian Learning and Teaching Council, 2009); Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com>>; Review of Academic Requirements <<http://www1.lawcouncil.asn.au/LACC/index.php/review-of-academic-requirements>>.

<sup>5</sup> Julian Webb, 'Taking Values Seriously: The Democratic Intellect and the Role of Values in the Law School Curriculum' in Mike Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 9, 22.

<sup>6</sup> See, eg, Susan Daicoff, 'Asking Leopards To Change Their Spots: Should Lawyers Change?' (1998) 11 *Georgetown Journal of Legal Ethics* 547; Patrick Schiltz, 'On Being a Happy Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession' (1999) <<http://www.averyindex.com>>; Armer, above n 1, 248, 250; Lawrence Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2005) 11 *Clinical Law Review* 425; Scott Peppet, 'Lawyer's Bargaining Ethics, Contracts and Collaboration: The End of the Profession and the Beginning of Professional Pluralism' (2005) 90 *Iowa Law Review* 472, 500; Allison van Laningham, 'Being the Blue Suit Interview (or Litigating without Distractions)' (2010) 60 *Federation of Defence and Corporate Counsel Quarterly* 273; Timothy Pratt, 'Three Rules for the 21<sup>st</sup> Century Lawyer: A View from Two Worlds' (2015) 64 *Federation of Defence and Corporate Counsel Quarterly* 277; James and Field, above n 1, 456-462; Gino Dal Pont, 'Illegitimate Access to State Benefits threatens Admission and Practice Entitlements' (Autumn, 2014) *Law Letter* 32; Queensland Law Society, Ethics Centre <<http://ethics.qls.com.au/taxonomy/news/term/102>>; Joanna Bagust, 'The Legal Profession and the Business of Law' (2013) 35 *Sydney Law Review* 27; Claire Macken and Madeleine Dupuche, *Law Essentials: Foundations in Australian Law* (Thomson Reuters, 2012); Deborah Rhode, *The Trouble with Lawyers* (Oxford University Press, 2015) 2-3, 12-13.

<sup>7</sup> See, eg, Justice Michael Kirby, 'Legal Professional Ethics in Times of Change' (Speech delivered at St James Ethics Centre, Sydney, 23 July 1996) <<http://www.hcourt.gov.au>>; Justice Michael Kirby, 'For Today's Law Students-The Profession You Are Entering' (Speech delivered at Murdoch University, Perth, 22 October 1997) <<http://www.hcourt.gov.au>>; Owen and Davis, above n 4; Steve Mark, 'Re-imagining Lawyering: Whither the Profession?' (Keynote Address, Australian

Unless addressed, it has the potential to threaten a well functioning legal system with access to social justice.<sup>8</sup> Secondly, national standards and government priorities in tertiary education require ethics and professionalism to be embedded within graduate attributes and TLOs.<sup>9</sup> Their rationale includes encouraging law students to learn about the positive role legal practitioners play within society and their commitment to justice.<sup>10</sup> Teaching ethical and professional skills helps to address these concerns and prepares the students for their professional duties and responsibilities.<sup>11</sup>

This chapter in the second section argues that foundation law students should be made aware of standards of ethical behaviour needed for legal practice, especially through case law relating to failure to uphold such standards. A trend in the legal profession from a focus on professionalism to a focus on profit makes it highly likely that such ethical challenges for future legal practitioners will become more frequent.<sup>12</sup> The third and final section of the chapter examines the role popular culture plays in constructing students' perceptions of the legal profession, especially the behaviour and roles of legal practitioners.<sup>13</sup> The use of popular culture as a less traditional, engaging method for students to develop understandings about the multi-faceted layers of ethical values and rules is a valuable pedagogical method.<sup>14</sup> Reflection about popular culture can, provide a pedagogical opportunity for students to question their perceptions about the legal system and consider how these perceptions influence their learning.<sup>15</sup>

## II RATIONALE FOR A FOCUS ON ETHICS AND PROFESSIONALISM

While much of the negative literature about the legal profession emerges from the United States of America, there are also growing concerns about the ethics of Australian legal practice.<sup>16</sup> Claims of lawyers' greed, self-service, self-deceit, tax avoidance and abuse of the system for personal gain permeate the literature.<sup>17</sup> Negative attitudes about legal practitioners appear to have intensified.<sup>18</sup>

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Academy of Law Symposium, Sydney, 25 July 2008); Justice Murray Gleeson, (Speech delivered at Australian Academy of Law Launch, Government House, Brisbane, 17 July 2007) <<http://www.academyoflaw.org.au>>; Chief Justice Marilyn Warren, 'Legal Ethics in the Era of Big Business, Globalisation and Consumerism' (Paper presented at the Joint Law Societies Ethics Forum, Melbourne, 20 May 2010); Sir Anthony Mason, 'The Independence of the Bench' (1993) 10 *Australian Bar Review* 1, 9; *Shapiro v. Kentucky Bar Association* (1988) 486 US 466, 488, 489; Armer, above n 1, 250; Anne Trimmer, 'The State of the Profession' (Paper Presented at the 32<sup>nd</sup> Legal Convention, Canberra, 11 October 2001) <<http://www.lawcouncil.asn.au>>; Anne Trimmer, 'Law-A Profession Or Business' (May 2001) *Australian Lawyer* 2, 4.

<sup>8</sup> Rhode, above n 6, 3.

<sup>9</sup> Discipline Standards in Australia, above n 4; Kift, Israel and Field, above n 4.

<sup>10</sup> Ibid.

<sup>11</sup> James and Field, above n 1, 33-39.

<sup>12</sup> Bagust, above n 6; Rhode, above n 6, 2, 12-13.

<sup>13</sup> Webb, above n 5, 4, 5; Suzette Barnaby, 'Legal Ethics for the Real World: A Model for Engaging First Year Law Students' (2004) 4 *Queensland University of Technology Law and Justice Journal* 219.

<sup>14</sup> Ibid.

<sup>15</sup> Barnaby, above n 13.

<sup>16</sup> See, eg, Armer, above n 1, 248, 250; Daicoff, above n 6; Krieger, above n 6; Schiltz, above n 6; Peppet, above n 6; Pratt, above n 6; van Laningham, above n 6; Rhode, above n 6; James and Field, above n 1, 456-462; Bagust, above n 6; Dal Pont, above n 6; Macken and Dupuche, above n 6, 3, 156; Queensland Law Society, above n 6.

<sup>17</sup> Armer, above n 1; Daicoff, above n 6; Krieger, above n 6; Schiltz, above n 6; Peppet, above n 6; Pratt, above n 6; van Laningham, above n 6; James and Field, above n 1, 456-462; Bagust, above n 6; Dal Pont, above n 6; Macken and Dupuche, above n 6, 3, 156; Queensland Law Society Ethics Centre, above n 6; Felicity Nelson, 'Public Continues to Distrust Lawyers'

Recent academic and media focus has concentrated on uncivil and expensive litigation involving ‘Rambo style’<sup>19</sup> legal tactics.<sup>20</sup> This focus impacts negatively on the credibility of the legal profession and can raise questions of unfairness where the litigation is at unnecessary cost to the client.<sup>21</sup>

### *A Incorporating Graduate Attributes and TLOs into the Legal Curriculum*

There is a recent focus on an appreciation of ethical standards and professional responsibility for students within legal education in Australian universities,<sup>22</sup> propelled by many stakeholders, namely the profession, Australian Law Deans, legal academics and government.<sup>23</sup> In 2008, influenced by the US Carnegie Foundation Report, the Law Admissions Consultative Committee (LACC) and the Council of Australian Law Deans (CALD) instigated an investigation with a Senate Standing Committee proposing a stocktake on the teaching of professional conduct in Australian Law Schools.<sup>24</sup> In 2009, CALD research was used to assist in the development of curriculum, informed by graduate attributes and to map the processes used to achieve this.<sup>25</sup> There was consistency across law schools to include an attribute aimed at addressing ethics and professionalism.<sup>26</sup> Commitment to development of these attributes across Australian law schools is evident.<sup>27</sup> Law faculties and university centres for teaching and learning promote ethical behaviour and professionalism as graduate attributes.<sup>28</sup> Compelling objectives for inclusion of these graduate attributes<sup>29</sup> include preparing students for effective participation in their chosen profession and enabling the university to demonstrate its commitment to producing employable graduates.<sup>30</sup>

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*Lawyers Weekly*, 30<sup>th</sup> April 2015 <<http://www.lawyersweekly.com.au/news/>>; <<http://www.lawyersweekly.com.au/folklaw/>>; Rhode, above n 6, 2, 12-13; Ysaiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (LexisNexis Butterworths, 2014) 7-18.

<sup>18</sup> See, eg, Macken and Dupuche, above n 6; ‘When Good Lawyers Go Bad: Part 1’ *Lawyers Weekly*, 7<sup>th</sup> October 2009 <<http://www.lawyersweekly.com.au/folklaw/>>; Nelson, above n; J O’Hara, ‘Creating Civility: Using Reference Group Theory to Improve Inter-Lawyer Relations’ (2007) 31 *Vermont Law Review* 965; Ross, above n 17.

<sup>19</sup> See, eg, Macken and Dupuche, above n 6; O’Hara, above n 18.

<sup>20</sup> Above n.

<sup>21</sup> Above n.

<sup>22</sup> Richard Johnstone, ‘Whole of Curriculum Design in Law’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 8-9; Australian Law Reform Commission, above n 4; ‘Re-Imagining the Law: Graduate Attributes’ (Presentation at the Australasian Law Teachers Association Conference, James Cook University, Cairns, 7 July 2008).

<sup>23</sup> Above n 22.

<sup>24</sup> Owen and Davis, above n 4.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> See, eg, Michelle Sanson, ‘Preparing Tomorrow’s Lawyers Today: Graduate Attributes in the First Year Law’ (Paper presented at ‘Prioritising Strategies For Engaging and Retaining First Year Students’ First Year Higher Education Conference, Townsville, 29 June 2009) <[www.edu.edu.au/graduateattributes/graduateattributes.html](http://www.edu.edu.au/graduateattributes/graduateattributes.html)>; Simon Barrie, ‘First Year: Starting the Journey Towards Graduate Attributes’ (Paper presented at the University of Tasmania Teaching Forum, Hobart, August 2010) 3; University of Tasmania, *Policy on Generic Attributes of Graduates of the University of Tasmania* (15 June 2001) <[www.teaching-learning.utas.edu.au](http://www.teaching-learning.utas.edu.au)>; Joanne Roebuck, ‘Reflective Practice: To Enhance Student Learning’ (2007) 2 *Journal of Learning Design* 77; TLO’s developed for the Juris Doctor degree endorsed by the Council of Law Deans, March 2012 <<http://www.cals.asu.au>>; Kift, Israel and Field, above n 4.

<sup>28</sup> ‘Re-Imagining the Law Graduate Attributes,’ above n 22; Tasmanian Institute of Teaching and Learning (TILT) at the University of Tasmania (UTAS) <<http://www.utas.edu.au/education/learning-and-teaching/resources/calt>>.

<sup>29</sup> Teaching and Learning <<http://www.teaching-learning.utas.edu.au>>.

<sup>30</sup> Central Queensland University, *Graduate Attributes–Curriculum Design and Development Unit* <[cddu.cqu.edu.au/index.php/Graduate Attributes](http://cddu.cqu.edu.au/index.php/Graduate%20Attributes)>; Teaching and Learning <[www.teaching-learning.utas.edu.au](http://www.teaching-learning.utas.edu.au)>.

The government also commissioned the Australian Learning and Teaching Council (ALTC) to manage the national Learning and Teaching Academic Standards project (LTAS). LTAS developed TLOs for a number of disciplines, including law.<sup>31</sup> In law, one aim of LTAS was to develop effective means to inform Australian law students about the values of professionalism, ethics and service.<sup>32</sup> Six TLOs were developed in the Bachelor of Laws.<sup>33</sup> TLO1 covers legal knowledge, including knowledge about justice and ethical practice in lawyers' roles. TLO1, as well as TLO2, relates to ethical decision-making, reflecting on ethical issues, professional responsibility and a developing ability to exercise professional judgment.<sup>34</sup>

In 2014 the LACC invited submissions relating to the removal of ethics and professionalism from undergraduate law curriculum.<sup>35</sup> This was based on comparisons between legal education in Australian and the United Kingdom together with potential overlaps that had been identified with practical legal training. This proposal was met with extensive objections from the judiciary, the profession, academics, law schools and law societies.<sup>36</sup> Ethics and professionalism have not been removed from the undergraduate law curriculum. This decision shows support for retention of the development of the understanding of ethics and professionalism in the law curriculum. Not only is it desirable for graduate attributes and TLOs on ethics and professionalism to inform the curricula, the LTAS report makes it a responsibility of those within universities to ensure these attributes are mapped and developed through the curriculum.<sup>37</sup>

The focus on TLOs is likely to intensify with the continued input and audit process overseen by the Tertiary Education Quality Standards Agency (TEQSA), a quality assurance agency for higher education.<sup>38</sup> Universities must comply with national standards and document the quality assurance mechanisms that ensure alignment. For example, UTAS published LTAS@UTAS outlining the delegated responsibilities for embedding Course Learning Outcomes (CLOs) and TLOs into curricula in certain disciplines including law.<sup>39</sup> Associate Deans of Learning and Teaching are required to map the attributes within selected individual disciplines and demonstrate how they are developed through the course with scaffolded opportunities for student learning to meet outcome requirements.<sup>40</sup> Unit

<sup>31</sup> Discipline Standards in Australia, above n 4.

<sup>32</sup> Kift, Israel and Field, above n 4.

<sup>33</sup> Kift, Israel and Field, above n 4; Normann Witzleb and Natalie Skead, 'Mapping and Embedding Graduate Attributes Across the Curriculum' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 35, [2.6].

<sup>34</sup> Kift, Israel and Field, above n 4; Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws) Reflective Practice* (Australian Learning and Teaching Council, 2013) <<http://www.lawteachnetwork.org>>; Kift, Israel and Field, above n 4.

<sup>35</sup> 'Review of Academic Requirements' <<http://www1.lawcouncil.asn.au/LACC/index.php/review-of-academic-requirements>>.

<sup>36</sup> Ibid.

<sup>37</sup> Teaching and Learning <<http://www.teaching-learning.utas.edu.au>>.

<sup>38</sup> Witzleb and Skead, above n 33.

<sup>39</sup> Teaching and Learning, above n 37.

<sup>40</sup> Ibid.

and Course Coordinators must provide students with transparency of assessment tasks and criteria related to outcomes.<sup>41</sup> This process involves a systematic approach to the development of curricula and statements of clear outcomes. In light of the approach, this chapter and the following chapter investigate pedagogical techniques highly suited to developing the teaching and learning of ethics and professionalism.

### *B Legal Education: Knowledge, Professional Skills, Values and Professional Identity*

Australian and United States legal education is becoming more inclusive of teaching professional skills and values as well as legal knowledge.<sup>42</sup> The Carnegie Foundation Report argues that there are three professional apprenticeships that need to be traversed.<sup>43</sup> The first apprenticeship is cognitive and relates to ways of thinking in the subject matter.<sup>44</sup> The second apprenticeship of skills and practice relates to what professionals do and how they act.<sup>45</sup> The third apprenticeship is one of professional identity and values.<sup>46</sup> Welsh Wegner argues that the third apprenticeship engenders the least compliance, the least of the apprenticeships to be understood and involves reliance on a hidden curriculum.<sup>47</sup> The latter consists of optional speakers, orientation programs, extra-curricular activities, pro bono initiatives and clinical offerings.<sup>48</sup> The hidden curriculum, never explicitly explained, can be used to engage and promote aspects of ethics and professionalism to students. An emphasis on legal knowledge, skills, professional identity and values is supported in current Australian legal education.<sup>49</sup>

The TLOs cover ethics and professional responsibility and a wider range of interrelated thinking, research, communication, collaboration and self-management skills.<sup>50</sup> These skills need to be embedded in the formal legal education curriculum as the TLOs state. Through group work in legal education, professional competencies can be developed and transitioned into the professional community.<sup>51</sup> Legal education literature supports the fostering of skills within the curriculum for the extended benefits offered for students.<sup>52</sup> Group work participation at law school has a number of benefits for student learning and professional skill development, including active learning, educational autonomy, the opportunity to develop academic and social relationships, as well as preparing students

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<sup>41</sup> Ibid.

<sup>42</sup> Baron and Corbin above n 3; Sullivan et al, above n 3.

<sup>43</sup> Sullivan et al, above n 3.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Judith Welsh Wegner, 'The Carnegie Foundation's Educating Lawyers: Four Questions for Bar Examiners' (2011) *The Bar Examiner* <[https://law.ubalt.edu/academics/pdfs/Carnegie%20Report%20article\\_final.pdf](https://law.ubalt.edu/academics/pdfs/Carnegie%20Report%20article_final.pdf)>.

<sup>48</sup> Ibid.

<sup>49</sup> Baron and Corbin, above n 3; Nick Zepke, 'Student Engagement: A Complex Business Supporting the First Year Experience in Tertiary Education' (2013) 4 *The International Journal of First Year Education* 1.

<sup>50</sup> Kift, Israel and Field, above n 4, TLO3, TLO4, TOL5, TLO7.

<sup>51</sup> Baron and Corbin, above n 3, 100-101.

<sup>52</sup> James and Field, above n 1, 189-371; Rhode, above n 6, 142.

for legal practice and employability.<sup>53</sup> Communication and collaboration skills are required for effective group work. The pedagogical approach of the educator is crucial to assist the development of these skills especially as students can be concerned about unequal contributions from group members.<sup>54</sup>

### III ETHICAL BEHAVIOUR WITHIN THE LEGAL PROFESSION: THE ROLE OF LEGAL EDUCATION

Law is a profession where high ethical standards are expected and demanded both for admission to practice and post admission.<sup>55</sup> There is a need for law students to develop values of honesty and transparency and to have the capacity to respond to ethical challenges.<sup>56</sup> Case law legal knowledge relating to professional conduct is an important component of teaching ethics because it reveals what is unacceptable behaviour. Conduct relating to admission to practice and post-admission conduct are linked to the value of honesty. This is frequently addressed as part of final year legal ethics subjects<sup>57</sup> but inclusion in the foundation year is crucial to assist students in understanding the nexus between academic dishonesty as students and the potential failure to be admitted to practice.<sup>58</sup>

#### *A The Standards of Ethical Behaviour required for Admission and Post Admission: Australian Legal Practice*

In addition to eligibility requirements, admission to the Australian legal profession is based on individual testimonies of good fame and character, as defined in State and Territory legislation.<sup>59</sup> In all States and Territories one needs to be a fit and proper person to be admitted to legal practice.<sup>60</sup> Upon entry to the profession some practitioners fail to retain appropriate standards imposed by conduct rules, legislation and common law.<sup>61</sup> In considering admission applications, the court admits

<sup>53</sup> James and Field, above n 1, 335.

<sup>54</sup> Ibid 338.

<sup>55</sup> See, eg, *Legal Profession Uniform Law Act 2014* (NSW) s 17 (1) (c) 'fit and proper person'; *Legal Profession Uniform Law Act 2014* (Vic) includes references to fit and proper person s 421(3); *Legal Profession Act 2007* (Tas) s 31(6)(b) 'fit and proper person'; *Legal Profession Act 2007* (Qld) s 35(2)(a)(ii) 'fit and proper person'; *Legal Profession Act 2008* (WA) s 26(1)(a)(ii) 'fit and proper person'; *Legal Profession Act 2006* (ACT) s 26 (2)(b) 'fit and proper person'; *Legal Profession Act 2006* (NT) s 25 (2)(b) 'fit and proper person'; *Legal Practitioners Act 1981* (SA) s 15(1)(a) 'fit and proper person.'

<sup>56</sup> Webb, above n 5.

<sup>57</sup> Robertson, above n 1, 112; Rhode, above n 6.

<sup>58</sup> See, eg, *Re AJG* (2004) QCA 88; *Law Society of Tasmania v Richardson* [2003] TASSC 9; *Law Society of Tasmania v Richardson (No 2)* [2003] TASSC 71; *Re OG (A Lawyer)* (2007) 18 VR 164.

<sup>59</sup> See, eg *Legal Profession Act 2007* (Tas) s 31(6)(b); *Legal Profession Act 2007* (Qld) s 35(2)(a)(ii); *Legal Profession Act 2008* (WA) s 26(1)(a)(ii); *Legal Profession Act 2006* (ACT) s 26 (2)(b); *Legal Profession Act 2006* (NT) s 25 (2)(b); *Legal Practitioners Act 1981* (SA) s 15(1)(a).

<sup>60</sup> Duncan Webb, 'Nefarious Conduct and 'The Fit and Proper Person' Test' in Francesca Bartlett et al (eds), *Alternative Perspectives on Legal Ethics and the Legal Profession* (Routledge, 2010) 218.

<sup>61</sup> See, eg, *Legal Profession Uniform Act 2014* (NSW) s 45(2), s 45(3); *Legal Services Commissioner v Stirling* (Legal Practice) [2012] VCAT 347; *Delahunty v Law Institute of Victoria Limited* (Legal Practice) [2012] VCAT 524; *Legal Services Commissioner v Telehus* (Legal Practice) [2014] VCAT 24; *Legal Services Commissioner v O'Haire* [2014] VCAT 9; *Legal Services Commissioner v Spaulding* (Legal Practice) [2013] VCAT 198; *Legal Profession Complaints Committee v Segler* [2013] WASAT 117; *Council of the New South Wales Bar Association v Costigan* [2013] NSWCA 407; *Council of the Law Society of New South Wales v Kingston* [2014] NSWCATOD 21; *Legal Services Commissioner v Needham* (Corrected) (Legal Practice) [2014] VCAT 305; *Legal Services Commissioner v Horak* (Legal Practice) [2014] VCAT 539;

those who display honesty and integrity and a history of abiding by the law.<sup>62</sup> Failure to disclose information about one's past professional or personal misbehaviour can prompt a refusal to admit the practitioner or, if admitted, a subsequent removal of the practitioner from practice.<sup>63</sup>

There is a strong emphasis on transparency with disclosure about behaviour relevant to admission standards.<sup>64</sup> Admission case law demonstrates that assessment of relevant conduct usually relates to non-professional incidents and/or failure to disclose such incidents given that individuals have not yet entered practice. Examples of relevant incidents include student misconduct,<sup>65</sup> lack of respect for legal proceedings such as family court processes,<sup>66</sup> prior convictions or charges,<sup>67</sup> bankruptcy and insolvency processes or investigations by relevant regulatory authorities.<sup>68</sup> Legal practitioners have been barred from practice where, for example, there has been a persistent failure to lodge taxation returns and business activity statements,<sup>69</sup> displayed trust account deficiencies,<sup>70</sup> preferred their own financial interests over those of others,<sup>71</sup> had conflicts of interests,<sup>72</sup> exhibited patterns of lying<sup>73</sup> or failed to reveal convictions.<sup>74</sup> Other misconduct cases involve fiduciary defaults,<sup>75</sup> overcharging clients,<sup>76</sup> failure to supervise other practitioners<sup>77</sup> and serious neglect or delay in dealing with legal issues.<sup>78</sup> The core inquiry flowing from the case law relates to the honesty of the individual.

Honesty or candour goes to the core of fitness to commence and continue to practice.<sup>79</sup> Criminal conduct is also relevant to the determination, particularly where the conduct is linked to practice. Some High Court of Australia decisions have examined criminal conduct and the ramifications for legal practice of non-disclosure of the conduct.<sup>80</sup> The High Court of Australia recognises that the

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*Legal Services Commissioner v PLP (Legal Practice)* [2014] VCAT 793; *Legal Services Commissioner v Moir* [2014] VCAT1087; *Legal Services Commissioner v Grosser (Legal Practice)* [2014] VCAT 1533.

<sup>62</sup> Francesca Bartlett, 'Student Misconduct and Admission to Legal Practice' (2008) 34 *Monash University Law Review* 309.

<sup>63</sup> *Ibid.*

<sup>64</sup> Nicole Ryan-Green, 'Personal Misconduct Isn't Professional Misconduct, is it?' <<https://www.youtube.com>>.

<sup>65</sup> See, eg, *Re Humzy-Hancock* (2007) QSC 34; *Re AJG* (2004) QCA 88; *Law Society of Tasmania v Richardson* [2003] TASSC 9; *Law Society of Tasmania v Richardson (No 2)* [2003] TASSC 71; *Re OG (A Lawyer)* (2007) 18 VR 164.

<sup>66</sup> *Re Bell* (Unreported, Supreme Court of Queensland, 6 December 1991).

<sup>67</sup> *Thomas v Legal Practitioners Admission Board* [2005] 1 Qd R 331; Justice Debra Mullins, 'Warts and All: The Impact of Candour in Assessing Character for the Admission to the Legal Profession' [2008] *Queensland Judicial Scholarship* 77.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Legal Services Commissioner v Stirling (Legal Practice)* [2012] VCAT 347.

<sup>70</sup> See, eg, *Delahunty v Law Institute of Victoria Limited (Legal Practice)* [2012] VCAT 524; *Legal Services Commission v Telehus (Legal Practice)* [2014] VCAT 24; *Legal Services Commission v O'Haire* [2014] VCAT; *Legal Services Commissioner v Spaulding (Legal Practice)* [2013] VCAT 2144; *Legal Profession Complaints Committee v Segler* [2013] WASAT 117; *Council of the New South Wales Bar Association v Costigan* [2013] NSWCA 407.

<sup>71</sup> *Council of the Law Society of New South Wales v Kingston* [2014] NSWCATOD 21.

<sup>72</sup> *Legal Services Commissioner v Needham (Corrected) (Legal Practice)* [2014] VCAT 305.

<sup>73</sup> *Legal Practitioner v Council of the Law Society of the Australian Capital Territory* [2014] ACTSC 13; *Legal Services Commissioner v Grosser (Legal Practice)* [2014] VCAT 1533.

<sup>74</sup> *Legal Services Commissioner v CBD* [2012] QCA 69.

<sup>75</sup> *Re Robb* (1996) 134 FLR 294.

<sup>76</sup> *Re Law Society of the Australian Capital Territory and Roche* (2002) 171 FCR 138.

<sup>77</sup> *Bridges v Law Society of New South Wales* [1983] 2 NSWLR 36.

<sup>78</sup> *A Legal Practitioner v Law Society of Tasmania* (2005) 13 Tas R 448.

<sup>79</sup> Bartlett, above n 62, 315.

<sup>80</sup> *Re Davis* (1947) 75 CLR 409; *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253; *Ziems v Prothonotary of the Supreme Court of NSW* [1957] 97 CLR 279.

inherent power to admit, disbar and discipline practitioners lies with the Supreme Court of the States and Territories, which legislation recognises.<sup>81</sup> Two High Court cases show criminal conduct was not a bar to practising because it was not linked to practice.<sup>82</sup> Supreme Court decisions have also upheld that where the legal practitioner has no understanding of the obligations of candour, they are no longer fit for practice or should not be granted a practising certificate.<sup>83</sup> Teaching such case law enables law students to be informed about the types of unprofessional practices that may affect a student's ability to enter the profession and practice law. Given that the line for misconduct is not always clear, legal education becomes even more important to assist students and future practitioners in delineating what falls within and outside its ambit.<sup>84</sup>

Whilst typically such instruction is included in the final year of a degree, there are grounds to argue that it should commence in the foundation year to ensure that students are aware of these pre-admission cases and that academic misconduct at university can detrimentally affect their ability to practice and to assist in the early development of ethical and professional perspectives.<sup>85</sup> The format of teaching case law has traditionally been through teacher-centred lectures and tutorials.<sup>86</sup> Whilst there is no reason why knowledge ought not continue to be conveyed in this way teaching practice can include more diverse techniques with both media and case law providing excellent sources for discussion or debate in this area.<sup>87</sup>

Media reports revel in depicting unethical behaviour of the legal profession and ethical dilemmas.<sup>88</sup> Over recent years, the media has documented examples of unprofessional, corrupt behaviour of lawyers and members of the bench.<sup>89</sup> Non-exemplary behaviour includes judges making inappropriate comments<sup>90</sup> and taking drugs and/or alcohol during the course of trials and hearings.<sup>91</sup> Lawyers and

<sup>81</sup> See, eg, *Legal Professional Uniform Law 2014* (NSW) s. 264; *Re Davis* (1947) 75 CLR 409; *Ziems* [1957] 97 CLR 279.

<sup>82</sup> *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253; *Ziems* [1957] 97 CLR 279.

<sup>83</sup> *Legal Profession Board of Tasmania v Haque* [2015] TASSC 5; *Wong v Law Institute of Victoria* [2014] VSC 136; *Legal Profession Complaints Committee v O'Halloran* [2013] WASC 430; *Law Society of Tasmania v Matthews* [2010] TASSC 60; *Legal Services Commissioner v Adamakis* [2013] VCAT 1970.

<sup>84</sup> Gino Dal Pont in 'Pointing the Finger' (2011) 85 *Law Institute Journal* 82; See also, *Legal Profession Complaints Committee v in de Braekt* (2011) WASAT 1; *Law Society of The Northern Territory v M Laren* (NT Legal Practitioners Disciplinary Tribunal, 24 June 2009).

<sup>85</sup> Robertson, above n 1, 99.

<sup>86</sup> Ibid.

<sup>87</sup> Gerald Hess, 'Principle 3 Good Practice Encourages Active Learning' (1999) 49 *Journal of Legal Education* 401.

<sup>88</sup> *Cesan v Director of Public Prosecutions (Cth)*; *Mas Rivadavia v Director of Public Prosecutions (Cth)* [2007] NSWCCA 273; *Cesan v The Queen*; *Mas Rivadavia v The Queen* [2008] HCA 52 [reported?]; 'Sleeping Judge Ian Dodd, 'Miscarriage of Justice: High Court' *The Australian* (online), 6 November 2008 <<http://www.theaustralian.com>>.

<sup>89</sup> Cassandra Sharp 'Becoming a Lawyer the Transformation of Student Identity through Stories' (PhD Thesis, University of Wollongong, 2006); Cassandra Sharp, 'Changing the Channel: What to do with the Critical Abilities of Law Students as Viewers' (2004) 13 *Griffiths Law Review* 185; Vincent Morello, 'Barrister Admits Corrupt Behaviour,' Nine MSN, 2009, <<http://new.ninemsn.com.au>>; Daniel Fogarty, 'Vic: Magistrate to Resign after Saying her Dad Drove Speeding Car' *AAP Australian National News Wire* (online), 25 June 2009 <<http://www.highbeam.com>>.

<sup>90</sup> Greg Moran, 'Judge Salcido to Resign After Public Censure' *The San Diego Union-Tribune* (online), 10 November 2010, <<http://www.signonsandiego.com>>.

<sup>91</sup> Joel Gibson, 'Lunch with Roger Dive', *Sydney Morning Herald* (online), 10 July 2010 <<http://www.smh.com.au>>; Morello, above n 89.



judges committing criminal acts and having inappropriate relationships with staff have also been reported in the media.<sup>92</sup>

Judicial ethics and accountability are very important to gain confidence in a legal system.<sup>93</sup> Judicial conduct for Chief Justices in Australia emphasises judicial ethics, expected judicial conduct and behaviour including civility, honesty and dignity.<sup>94</sup> Unfortunately not all members of the judiciary comply, with examples of non-compliance with standards abundant in the United States and present also in Australia.<sup>95</sup> Reported behaviour includes judicial bullying,<sup>96</sup> judges falling asleep during trials<sup>97</sup> and committing criminal acts for personal gain.<sup>98</sup> Legal education plays a role in illustrating to students what type of judicial behaviour is or is not appropriate. Evaluating and analysing these types of cases can be engaging for students and open up dialogue between peers and educators on these topics. This can also be achieved through court experiences, which are examined in further detail in the next chapter.

### *B Displays of Unethical Conduct: Overstepping Professional Boundaries*

Unethical behaviour by members of the legal profession is recognised as a serious problem.<sup>99</sup> Profit as a major goal of legal practice can overshadow standards of ethical professionalism. This is recognised as problematic by the Australian judiciary,<sup>100</sup> academia<sup>101</sup> and members of the legal profession.<sup>102</sup> Former High Court Justice Kirby strongly recommends that future law graduates develop an ethical conscience in providing legal services, noting the concerns with profit over professionalism and the ‘win at all cost’<sup>103</sup> attitude of practitioners. Some members of the judiciary argue that economic pressures on lawyers produce a decline of ethical standards, which require honesty, fidelity, loyalty, diligence and competence in the service of clients, above commercial self-advantage.<sup>104</sup> Young lawyers can be left with the impression that practice is only about the billable hour and profit.<sup>105</sup> Profit

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<sup>92</sup> Staci Zaretsky, ‘Judge of the Day’, 2012, <<http://abovethelaw.com>>; Jock Anderson and Liam Baldwin ‘Justice Bill Wilson Quits’, *The National Business Review* (online), October 2010 <<http://www.nbr.co.nz>>.

<sup>93</sup> James Thomas, *Judicial Ethics in Australia* (LawBook, 2<sup>nd</sup> ed, 1997).

<sup>94</sup> *Ibid* 6-7, 17.

<sup>95</sup> See, eg, Oscar Roos, ‘Book Review: Judicial Ethics in Australia (3rd ed)’ (2009) 14 *Deakin Law Review* 415; ‘Former Federal Court Justice Marcus Einfeld jailed for Perjury, Perverting the Course of Justice’ (20 March 2009) *News.com* <<http://www.news.com>>; Judges <[justianarchive.com](http://justianarchive.com)>.

<sup>96</sup> Justice Michael Kirby, ‘Judicial Stress and Judicial Bullying’ (2014) 14 *QUT Law Review* 1.

<sup>97</sup> *Cesan v The Queen*[2007] NSWCCA 273; *Cesan v The Queen*[2008] 236 CLR 358; Kirby, above n, 9-10.

<sup>98</sup> Michael Asimow and Shannon Mader, *Law and Popular Culture: A Course Book* (Peter Lang, 2<sup>nd</sup> ed, 2013).

<sup>99</sup> Armer, above n 1, 250; Owen and Davis, above n 4; Gleeson, above n 7; Kirby (1996), above n 7; Kirby (1997), above n 7; Mark, above n 7; Mason, above n 7; Trimmer, above n 7; Warren, above n 7; *Shapiro* (1988) 486 US 466, 488, 489; Fogarty, above n 89; Moran, above n 90; Gibson, above n 91; Anderson and Baldwin, above n 92; Zaretsky, above n 92.

<sup>100</sup> Owen and Davis, above n 4.

<sup>101</sup> Armer, above n 1, 250; Gleeson, above n 7; Kirby (1996), above n 7; Kirby (1997), above n 7; Mark, above n 7; Mason, above n 7; Warren, above n 7; *Shapiro* (1988) 486 US 466, 488, 489.

<sup>102</sup> Trimmer, above n 7.

<sup>103</sup> Kirby (1996), above n 7.

<sup>104</sup> *Ibid*.

<sup>105</sup> Tom Bathurst, ‘Balancing Business Interests with Ethics: Lawyers Grapple with Balancing Interests and Ethics’, *The Australian* (Sydney), 27 August 2012, 33; ‘Public Continues to Distrust Lawyers’ above n 17; Bagust, above n 6.

must be balanced with professionalism given that legal practitioners are a critical part of the rule of law that underpins democracy.<sup>106</sup>

While education is no panacea against unprofessional conduct in practice, it is an appropriate and important response to foster and mandate ethical conduct. The legal academy needs to educate students about how the problems with running law as a business can conflict with the notion of service to the community.<sup>107</sup> This can also cause pressure for the individual practitioner.<sup>108</sup> The focus on making money, long hours and the pressure to bill clients may impair the legal practitioners' physical and emotional disposition to practice.<sup>109</sup> Legal education also needs to be balanced with the positive aspects of lawyering and assist law students to develop resilience, reflective practice and self-management strategies.<sup>110</sup> This is also important because there seems to be a nexus in some cases between mental illness and unethical behaviour.<sup>111</sup>

#### IV LAWYERS IN POPULAR CULTURE

There are two ways, in this thesis, in which popular culture is connected to issues of ethics and professionalism for law students. Popular cultural constructions of lawyers and legal systems impact on how many law students develop their attitudes to lawyers and the law.<sup>112</sup> The popularity of popular cultural versions of the law makes it an apt tool to assist students in critically reflecting on and about ethics and professionalism in the law.<sup>113</sup> Popular culture in this context includes television, movies, novels and the media.

This thesis argues that discourses of popular culture offer an opportunity for the legal educator. The use of popular culture can be used to make the link between ethics as part of culture, not as a universal truth but as a set of discourses from which students have the agency to acknowledge the consequences

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<sup>106</sup> Above n.

<sup>107</sup> Elizabeth Ellis, *Principles and Practice of Australian Law* (LawBook Co, 2<sup>nd</sup> ed, 2009) 163-164.

<sup>108</sup> Lynda Crowley-Cyr, 'Towards Ethical Literacy by Enhancing Reflexivity in Law Students' in Robertson et al, above n 5, 148; Schiltz, above n 6; James and Field, above n 1, 6.

<sup>109</sup> Crowley-Cyr, above n; Schiltz, above n 6; James and Field, above n 1, 6; Nicholas James Murfett, 'The Case for a Paradigm Shift in Civil and Commercial Dispute Resolution-Moving from Fear to Love-A Solicitor's Perspective' (Paper presented at the 3<sup>rd</sup> International Conference on Therapeutic Jurisprudence, 8th June 2006, Perth Convention and Exhibition Centre, Perth, Western Australia) 1.

<sup>110</sup> James and Field, above n 1, 343, 345-346, 354, 364; Penelope Watson and Rachael Field, 'Promoting Student Well-being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 389; Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2014) 26, 175, 224.

<sup>111</sup> See, eg, *Legal Profession Board of Tasmania v W* [2011] TASSC 67; *Law Society of Tasmania v McDougall* [2007] TASSC 60; 'Former Tas Lawyer Gregory O'Rourke Struck Off The Role After Theft Conviction', 23 September 2014, <<http://abc.net.au/news>>.

<sup>112</sup> Leslie Moran et al (eds), *Law's Moving Image* (Cavendish, 2004); Margaret Thornton (ed) *Romancing the Tomes: Popular Culture, Law and Feminism* (Cavendish, 2002); Sharp (2006) above n 89; James and Field, above n 1, 5; Sally Kane, *5 Myths Regarding the Practice of Law* (2012) <<http://legalcareers.about.com>>.

<sup>113</sup> Asimow and Mader, above n 98, 6; Deborah Rhode, 'Teaching Legal Ethics' (2007) 51 *Saint Louis University Law Journal* 1043; Diana Henriss-Anderson, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45; Field, Duffy and Huggins, above n 110, 13.

of their choices.<sup>114</sup> Popular culture has been recognised as a source for critical reflection in both Australia and the United States.<sup>115</sup> A significant number of pedagogical approaches in law schools use popular culture to encourage critical reflection.<sup>116</sup> The approaches have the potential to be engaging for students and allow them the opportunity to compare and contrast real experiences with fictional texts, in order to evaluate critically the profession.<sup>117</sup>

A number of academics have recognised the significant influence popular culture has on the practice of law and legal education.<sup>118</sup> Sherwin is concerned that the influences of the mass media as part of popular culture can erode the legitimacy of the law.<sup>119</sup> When the mass media and law intermingle, he maintains, the result is that the law is in need of restoration due to the negative effects of our postmodern culture.<sup>120</sup> Sharp further argues that although the intersection of law and popular culture has not been so easily accepted, stories and popular cultural texts are important pedagogical tools for student learning and critical reflection.<sup>121</sup> Her research shows that the process of undertaking first year law enables students to be very receptive to ethical talk through their engagement with popular cultural texts.<sup>122</sup> There is a place in legal education for students to become more self-aware and reflective about their personal ethics and consequently placed in a better position to make professional decisions within legal practice.<sup>123</sup> It is, she maintains, important for students to have access to a range of possible discourses in order to provide them with the agency to select those discourses, which are important to them and to their professional futures.

Given that popular culture is an important source of socialisation and learning, its representations can provide valuable contexts for students' constructions of lawyers' identities, ethical perspectives and opportunities for learning.<sup>124</sup> Understanding of lawyers is influenced and constructed through the mediums of television, film and literature.<sup>125</sup> Images of lawyers permeate television in Australia, the United States and the United Kingdom.<sup>126</sup> Television programmes construct lawyers with contrasting

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<sup>114</sup> Sharp (2004), above n 89, 206-207.

<sup>115</sup> Ibid.

<sup>116</sup> Sharp (2006), above n 89; Sharp (2004) above n 89; Asimow and Madder, above n 98; Rhode, above n 113; Henriss-Anderson, above n 113.

<sup>117</sup> Asimow and Madder, above n 98.

<sup>118</sup> Moran et al, above n 90; Sharp, above 89; James and Field, above n 1, 5; Sally Kane, above n 133.

<sup>119</sup> Richard Sherwin, *When the Law goes Pop: The Vanishing Line Between Law and Popular Culture* (University of Chicago Press, 2000).

<sup>120</sup> Ibid.

<sup>121</sup> Sharp (2004), above n 89.

<sup>122</sup> Ibid.

<sup>123</sup> Sharp (2004), above n 89, 203; David Rich, 'Moral Theory and Clinical Legal Education: The Development of Professional Identity' (1984) 22 *University of Western Ontario Law Review* 183, 184; James Elkins, 'Lawyer Ethics: A Pedagogical Mosaic' (2000) 14 *Notre Dame Journal of Law Ethics and Public Policy* 117.

<sup>124</sup> The Law in News Collection in LAW 121 was comprised of selected copies newspapers or electronic articles of relevance to the Introduction to Law at the University of Tasmania; See also, Sharp (2004), above n 89.

<sup>125</sup> Robin Malloy, 'Symposium on the Images of Law(yers) in Popular Culture: Introduction' (2003) 53 *Syracuse Law Review* 1161.

<sup>126</sup> These have included Fox (USA), *Ally McBeal*, 1997-2002; BBC (UK), *Rumpole of the Bailey*, 1975-1992; ABC 1 (Australia), *Rake*, 2010-2014; ABC (USA), *Boston Legal*, 2004-2008; Channel 10 (USA), *The Good Wife*, 2009-2015; ABC

images. A Rambo-style ‘amoral gun-fighter’<sup>127</sup> is one portrayal of the lawyer in popular culture.<sup>128</sup> ‘In many cases, a lawyer sees himself as the aggressive gladiatorial fighter for his client's perceived rights and for this price will join in and fight the good fight with all his might - in some cases with little regard for morality or ethics’.<sup>129</sup>

Sometimes successful lawyers in popular cultural texts are depicted as those who frequently push ethical boundaries. An example is the character of Cleaver Green in ABC1's *Rake*.<sup>130</sup> This series depicts the Australian lawyer as charming, amusing and successful but chronically unethical and unprofessional. These images can be contrasted with more conservative portrayals of characters such as Magistrate Gibson in *Sea Change* and Judge Gray in *Judging Amy*.<sup>131</sup> Such television constructions of lawyers also depict them as wealthy, materialistic,<sup>132</sup> glamorous<sup>133</sup> and unbeatable.<sup>134</sup> The characters in *Crownies*, *Janet King* and *Silk* reveal an array of more realistic legal personalities working long hours to make money with stress and strain shown in their demeanours.<sup>135</sup> Other popular cultural genres portray the lawyer in contrasting extremes. In film, lawyers tend to be polarised as brilliant or hopeless, or both.<sup>136</sup> They can be portrayed as glamorous, rich and smart or as true fighters who are not always ethical.<sup>137</sup> The wealth of the lawyer not infrequently comes at a cost to the client.<sup>138</sup> Other impressive portraits show the lawyer as a persistent social justice crusader, particularly when accounts are based on fact.<sup>139</sup>

Legal fiction has become an important area of study as popular culture provides a potent source of evaluation and critique for law students.<sup>140</sup> In novels, lawyers are often portrayed as rich, powerful and self-seeking, yet on other occasions they are sometimes constructed as persistent and hardworking

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(USA), *The Practice*, 1997-2004; Paramount Network Television (USA), *Jag*, 1995-2005; TvMA (USA), *Damages*, 2007-ongoing; SBS (USA), *Shark*, 2006-2008; ABC (USA), *Dirty Sexy Money*, 2007-2009; ABC 1 (Australia), *Crownies*, 2011-2013; ABC 1 (Australia), *Janet King*, 2014; Sharp (2004), above 89.

<sup>127</sup> Nikolas James, ‘Skulls full of Mush’: Reflections upon ‘Thinking like a Lawyer’ as a Threshold Concept in Legal Education’ (Paper presented at the Third Biennial Threshold Concepts Symposium, The University of New South Wales, Sydney, 2 July 2010).

<sup>128</sup> NBC (USA), *Law and Order*, 1990-2010; ABC (Australia), *Janet King*, 2014-ongoing.

<sup>129</sup> Editorial, ‘The Greed of Lawyers’ *Sydney Morning Herald* (Sydney), 30 August 1997.

<sup>130</sup> Malloy, above n 125.

<sup>131</sup> ABC (Australia), *Sea Change*, 1998-2000; SBC (USA), *Judging Amy*, 1999-2005.

<sup>132</sup> David Machilowitz, ‘Lawyers on T.V.’ (November 1988), *ABA Journal* <<http://google.books.com>>.

<sup>133</sup> Sharp (2004), above n 89; See also ABC (USA), *Scandal*, 2012-ongoing; ABC1 (Australia), *Crownies*, 2011-2013; ABC1 (Australia), *Janet King*, 2014-ongoing; USA Network, *Suits* 2011-ongoing.

<sup>134</sup> NBC (USA), *LA Law*, 1986-1994.

<sup>135</sup> ABC1 (Australia), *Crownies*, 2011-2013; ABC 1 (Australia), *Janet King*, 2014-ongoing; See, eg, BBC (UK), *Silk*, 2010-2013; BBC (UK), *Broadchurch* 2014.

<sup>136</sup> *Legally Blonde* (Directed by Robert Luketic, MGM, 2001) 1:36.00; *The Pelican Brief* (Directed by Alan Pakula, Warner Bros, 1993) 1: 41.00; *Guilty as Sin* (Directed by Sydney Lumet, Hollywood Pictures, 1993) 1:07.00; *Intolerable Cruelty* (Directed by Joel Cohen, Hollywood Pictures, 2003) 1:07.00, *Fracture* (Directed by Gregory Hoblit, Castle Rock, 2007) 1:13.00; *The Lincoln Lawyer* (Directed by Brad Furman, Lakeshore Entertainment, 2011) 1:18.00; *Something Borrowed* (Directed by Luke Greenfield, Alcon Entertainment, 2011) 1:12.00; *Chicago* (Directed by Rob Marshall, Producer Circle Co., 2002) 1:13.00.

<sup>137</sup> *Fracture*, above n 136; *Something Borrowed*, above n 136.

<sup>138</sup> *The Lincoln Lawyer*, above n 136.

<sup>139</sup> *Erin Brokovich* (Directed by Steven Soderbergh, Jersey Films, 2000) 1:30.00; *Conviction* (Directed by Tony Goldwyn, Fox Searchlight Pictures, 2010) 1:07.00; *Michael Clayton* (Directed by Tony Gilroy, Warner Bros, 2007) 1:19.00.

<sup>140</sup> Kift et al, above n 1; Sharp (2004), above n 89.

for a cause.<sup>141</sup> The key theme of an unrepentant search for justice is conveyed through recent best selling legal fiction.<sup>142</sup> Many of the authors have intimate interconnections with real life legal practice, having either studied or practiced law.<sup>143</sup> Strong, smart,<sup>144</sup> skilled,<sup>145</sup> confident and glamorous lawyers pervade the literature as do corrupt practitioners or judges.<sup>146</sup> Other recent characterisation of lawyers reveals persistent themes of money hungry,<sup>147</sup> win at all cost, gun blazing approaches to justice.<sup>148</sup> The high impact of the stress of legal practice also prevails within the genre.<sup>149</sup> Degradation and cynicism remain rife in everyday jokes and colloquialisms about lawyers in these texts.<sup>150</sup> To some students the depictions may even be a source of truth, making the topic appropriate to include within the curriculum. This also makes it important for law students' curriculum to be balanced with the positive aspects of lawyering including practising in an ethical and professional manner.<sup>151</sup>

## V CONCLUSION

This chapter examines the rationale for prioritising ethics and professionalism for law students from the foundation years. Displays of unprofessional behaviour from students, legal practitioners and the judiciary show the consequences non-compliance can have in terms of not being accepted into legal practice or disentitlement to practice. It shows how traditional legal knowledge about rules of professional practice can highlight the boundaries of acceptable and not acceptable behaviour. This includes the values of honesty and candour.

The literature supports the view that legal education needs to focus on positive aspects of lawyering to assist law students to develop legal skills, resilience and reflective practice.<sup>152</sup> Such practices enhance the need to be ethical and professional in an environment prone to challenges and negativity. Developing more positive legal skills and appropriate values are endorsed as important for professional practice in the face of an often negative culture. Such skills can be developed in group work in the law classroom. Group work involving discussion and debate has potential for student

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<sup>141</sup> See, eg, PD James; Elizabeth George; Val McDermott; Ruth Rendell; John Grisham; Scott Turow; John Mortimer; Lisa Scottoline; Steve Martini; Richard North Patterson; James Patterson; Jodi Picoult; Michael Connelly; Sole Stein; David Ellis; Alessandra Torre; Linda Fairstein.

<sup>142</sup> John Grisham; Scott Turow; John Mortimer; Lisa Scottoline; Steve Martini; Richard North Patterson; James Patterson; Jodi Picoult; Michael Connelly; Sole Stein; David Ellis; Alessandra Torre; Linda Fairstein.

<sup>143</sup> Ibid.

<sup>144</sup> Lisa Scottoline, *Lady Killer* (Harpers Collins, 2008); John Grisham, *The King of Torts* (Dell, 2003).

<sup>145</sup> Alex Cooper in the Linda Fairstein's series including *Final Jeopardy* (Pocket Books, 1997); *Likely to Die* (Pocket Books, 1997); *Cold Hit* (Pocket Books, 2000); *The Deadhouse* (Pocket Books, 2001); *The Bone Vault* (Hackett Digital, 2003); *The Kills* (Pocket Books, 2004); *Hell Gate* (Hachette Digital, 2011).

<sup>146</sup> See, eg, Alessandra Turow's *Personal Injuries* (Farrar, Straus & Giroux, 1999); *Innocent* (Grand Central, 2010); *The Street Lawyer* (Century, 1998); *The Associate* (Dell, 2009).

<sup>147</sup> Michael Connelly, *The Gods of Guilt* (Orion Books, 2013).

<sup>148</sup> David Ellis, *Breach of Trust* (Penguin, 2011).

<sup>149</sup> *The Litigators* (Hodder & Stoughton, 2011).

<sup>150</sup> See, eg, Brain Candy Jokes and Humor <<http://www.corsinet.com/braincandy/jklaw.html>>; Work Joke <[www.workjoke.com/lawyers-jokes.html](http://www.workjoke.com/lawyers-jokes.html)>; Field, Duffy and Huggins, above n 110, 175.

<sup>151</sup> James and Field, above n 1, 34.

<sup>152</sup> James and Field, above n 1, 343, 345-346, 354, 364; Watson and Field, above n 129; Field, Duffy and Huggins, above n 110.

learning and professional skill development in these areas including active learning, autonomy, the opportunity to develop academic and social relationships as well as preparing students for legal practice and employability.<sup>153</sup> Media reports and case law on real professional misconduct cases can provide debate and exploration of value dilemmas for group discussions.<sup>154</sup> Developing reflective skills about popular cultural images of the profession is likely to be beneficial for student reflection about ethical and professional issues. Less traditional pedagogy such as critically reflecting about popular culture can assist with the development of legal skills and knowledge about the rules of practice. The next chapter focuses on these techniques and other suitable pedagogical techniques for enhancing legal education in relation to ethics and professionalism.

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<sup>153</sup> Above n.

<sup>154</sup> Webb, above n 5.

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# CHAPTER 3: INCORPORATING LEGAL ETHICS AND PROFESSIONALISM INTO THE LEGAL CURRICULUM FROM FOUNDATION YEAR

## I INTRODUCTION

This chapter argues for the use of a pervasive model of teaching ethics and professionalism in the legal curriculum.<sup>1</sup> A pervasive model supports the position that the teaching of ethics and professionalism should pervade the entire curriculum, allowing multiple opportunities for student learning.<sup>2</sup> Rhode has recently re-endorsed such a recommendation in relation to teaching ethics in legal education in the United States, indicating that it should no longer be confined to a single subject nor marginalised.<sup>3</sup> The first section of the chapter, at the same time, emphasises the importance of teaching ethics and professionalism from the foundation year of a legal degree. This is the first step in the pervasive approach of teaching.<sup>4</sup> The benefits of early incorporation in the foundation years of a law degree, it is argued, encourage the development of skills needed within a profession, but may also have important implications for educators and faculties in terms of compliance with government standards. This chapter examines approaches and techniques, which are suited to teach law students about ethics and professionalism.

The second section of the chapter, drawing on literature from the United States and Australia,<sup>5</sup> reveals some student-centred, active learning pedagogical tools to support and enhance student learning about ethics and professionalism in a pervasive context.<sup>6</sup> It reveals that the enthusiastic commitment of teaching staff is an essential ingredient to assist student engagement and learning in these areas.<sup>7</sup> Also, using a diversity of pedagogical techniques has significant merit in terms of student engagement and learning.<sup>8</sup> While conceding that teaching legal ethics is pedagogically complex, this section identifies reflective journaling as an important pedagogical method because it can help facilitate critical reflection.<sup>9</sup>

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<sup>1</sup> Ainslie Lamb, John Littrich and Katrina Murray, *Lawyers in Australia* (Federation Press, 2015) 217; Russell Peace, 'Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School' (1998) 29 *Loyola University Chicago Law Journal* 719; Gonzalo Puig, 'Legal Ethics in Australian Law Schools' (2008) 42 *Law Teacher* 29; Lauren Solberg, 'Reforming the Legal Ethics Curriculum: A Comment on Edward Rubin's "What's Wrong with Langdell's Method and What to Do About It?"' (2009) 62 *Vanderbilt Law Review* 12.

<sup>2</sup> Above n 1.

<sup>3</sup> Deborah Rhode, *The Trouble with Lawyers* (Oxford University Press, 2015) 7, 131.

<sup>4</sup> Deborah Rhode, 'Ethics by the Pervasive Method' (1992) 42 *Journal of Legal Education* 31.

<sup>5</sup> See, eg, Richard Johnstone, 'Whole of Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 8-10; Michael Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 3; Kieran Tranter et al (eds), *Re-Affirming Legal Ethics: Taking Stock and New Ideas* (Routledge, 2010) 5-6.

<sup>6</sup> Chapter 3 IV.

<sup>7</sup> Frank Armer, 'The Teaching of Ethics in Australian Law Schools' (1998) 16 *Journal of Professional Legal Education* 134.

<sup>8</sup> Suzanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Australian Learning and Teaching Council, 2009).

<sup>9</sup> Chapter 4 II A; Chapter 4 III D; Chapter 4 III I; Chapter 5 I-VI.



## II METHODS OF INCLUDING ETHICS AND PROFESSIONALISM INTO LAW SCHOOL CURRICULA

There are three main methods of including the teaching of ethics in law schools: the discrete method, the pervasive method and the cross-curricula method.<sup>10</sup> The position taken in this thesis is that the most effective method for incorporation of ethics is pervasively from the foundation years onwards. The discrete method treats ethics as a stand-alone subject, usually in the final year of a law degree.<sup>11</sup> This method has been criticised for its narrow focus on codes of conduct and rule-governing behaviour,<sup>12</sup> thereby failing to foster student understanding of the values of the system.<sup>13</sup> The discrete method can fail to impress on students the importance of ethics in developing frameworks for ethical judgment.<sup>14</sup> Whilst the discrete method does not have to suffer these drawbacks the pervasive method is advantageous because it allows ethical frameworks to be developed over a much longer time frame. In the pervasive method, ethical issues are explored as they arise in both substantive legal knowledge and skills based subjects.<sup>15</sup> This method has been criticised on the basis that it potentially infringes on the teacher's autonomy and can increase coordination and duplication difficulties within faculties.<sup>16</sup> Legal educators have, however, pointed out the benefits of incorporating ethics at multiple points in the curriculum, including demonstrating how it can enhance student development and the exploration of ethical issues, which lack clear answers.<sup>17</sup> The teaching of ethics and professionalism can begin from the foundation year of law. Scaffolding ethics into the curriculum with more frequent exposure to ethical issues allows 'richer and wider learning opportunities'.<sup>18</sup> Given ethical issues are common in law increased and differing exposure to such issues, the pervasive method has significant merit. The approach also has merit in relation to teaching professionalism, which is linked with ethics because of the duty to act ethically and honestly both as a law student and as a future legal practitioner.<sup>19</sup>

The dominant approach to the teaching of ethics and professionalism within Australia law schools has not been mapped recently in the literature. Mapping in this context means examining and

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<sup>10</sup> Julian Webb, 'Taking Values Seriously: The Democratic Intellect and the Role Values Play in Law School Curriculums' in Mike Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 134-136.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Diana Henriss-Anderson, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Gino Dal Pont, *Lawyers' Professional Responsibility* (Thomson Reuters, 4<sup>th</sup> ed, 2010); Michael Robertson, 'Embedding "Ethics" in Law Degrees' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 103-106.

<sup>17</sup> Nina Tarr, 'Teaching the Reflective Practitioner in the United States' (1999) 33 *Law Teacher* 310; Peter Yeoh, 'Teaching Ethics in Financial Services Law' (March 2010) 44 *The Law Teacher* 65; Sally Kift, '21<sup>st</sup> Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1; Robertson, above n, 99; Johnstone, above n 5, 29; Rhode, above n 3, 7, 131.

<sup>18</sup> Robertson, above n 16, 110.

<sup>19</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 435, 458.

documenting how each law school documents how it teaches ethics and professionalism. Legal researchers have previously noted the absence of the pervasive model within Australian law schools despite its significant advantages.<sup>20</sup> Although the advantages of pervasive methods are widely recognised by legal educators, the practice across Australia and the United States still seems to be to teach ethics and professionalism as discrete subjects at the end of a degree.<sup>21</sup> A more pervasive approach to teaching ethics and professionalism, however, is becoming more evident. For example, a speech by former High Court Justice Kirby from the late 1990s recognises that some Australian law schools are teaching ethics more pervasively.<sup>22</sup> He argues that ethics should not only be taught as a separate unit at the end of a course but should inform a law school curriculum.<sup>23</sup> This is supported in legal education literature through approaches enabling ethical perspectives to be developed incrementally at the introductory, intermediate and graduate-ready levels.<sup>24</sup> Ethical issues pervade core subjects inclusive of foundation law units.<sup>25</sup> Such issues introduced in the foundation year are a focus of this thesis.<sup>26</sup> Legal skills need to be recognised as a means to empower students and enable them to recognise the ethical obligations attached to these powers.<sup>27</sup> The more engaging the ethics related activities are for the students the more desirable they are for inclusion into subjects.<sup>28</sup>

*A Foundation Year Experience: A Place for Developing Understandings of the Roles and Responsibilities of Lawyers, Engagement with Learning, Skill Development and Communities of Practice*

The literature reveals differing and contested views on the best time to introduce learning about ethical practice.<sup>29</sup> Some legal academics argue that the appropriate forum for developing an ethical disposition is in clinical legal education,<sup>30</sup> whereas others maintain that it is best placed in undergraduate legal education from the foundation year.<sup>31</sup> The emphasis on ethical practice through law school and in clinical legal education reinforces the importance of ethical values and dilemmas in legal practice.

<sup>20</sup> Gonzalo Puig, 'Legal Ethics in Legal Education: A Review and Critique of Anglo-American Approaches and Methods' (2008) 6 *Journal of Commonwealth Law and Legal Education* 5; Helen Whalen-Bridge, 'The Lost Narrative: The Connection between Legal Narrative and Legal Ethics' (2010) 7 *Journal of Association of Legal Writing Directors* 229; Robertson, above n 16, 111.

<sup>21</sup> See, eg, 'International Forum of Teaching Ethics and Professionalism' <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Rhode, above n 3, 7; Rhode, above n 4; Robertson, above n 16, 110-111.

<sup>22</sup> Justice Michael Kirby, 'For Today's Law Students - The Profession You Are Entering' (Speech delivered at Murdoch University, Perth, 22 October 1997) <<http://www.hcourt.gov.au>>.

<sup>23</sup> Kirby, above n. See also, Justice Michael Kirby, 'Legal Professional Ethics in Times of Change' (Speech delivered at St James Ethics Centre, Sydney, 23 July 1996) <<http://www.hcourt.gov.au>>.

<sup>24</sup> Johnstone, above n 5, 29; Robertson, above n 16, 110-112.

<sup>25</sup> Robertson, above n 16, 111-112.

<sup>26</sup> Ibid.

<sup>27</sup> Lucy Maxwell, 'How to Develop Law Students' Critical Awareness: Change the Language of Legal Education' (2012) 22 *Legal Education Review* 99.

<sup>28</sup> Ibid.

<sup>29</sup> Francesca Bartlett, Reid Mortensen and Kieran Tranter, *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2011) 75; Lynda Crowley-Cyr, 'Towards Ethical Literacy by Enhancing Reflexivity in Law Students' in Robertson et al, above n 5, 148; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2007) 254.

<sup>30</sup> Bartlett, Mortensen and Tranter above n.

<sup>31</sup> Crowley-Cyr, above n 29; Parker and Evans, above n 29.

The foundation year of legal education, it is argued, is an ideal place for beginning to develop understandings of the realities of legal practice, through examining the roles and responsibilities of lawyers, engagement with the law and communities of practice. This thesis emphasises the need to improve the first year experiences of law students through giving greater attention in legal education to the role of the lawyer.<sup>32</sup> Most foundation year law students' perceptions of lawyering stem from previous experiences, which are often highly influenced by popular culture.<sup>33</sup> Law school affords future lawyers an opportunity to learn about the expectations of legal practice and to challenge any misconceptions about practice.<sup>34</sup> This position is reflected in James and Field's first year law student text, which includes commentary about the different roles of lawyers and potential employment opportunities open to those who study law in Australia.<sup>35</sup> They outline the commitment to justice required of the practitioner,<sup>36</sup> ethics, professional ethics, ethical rules and recognise potential conflicts between personal and professional ethics.<sup>37</sup>

Higher education literature suggests that greater attention should be given to first year university students in order to engage and assist them with learning.<sup>38</sup> This is a critical year, particularly in professional courses such as law with a key element being student engagement, which is 'internationally recognised as a prominent indicator of the first year experience'.<sup>39</sup> A number of legal educators have expressed concern over the need for the first year experience in law school to not only assist with learning for future professional practice but also to be engaging and meaningful.<sup>40</sup> The issue of engagement is so important that it has proven to be the impetus for the development of

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<sup>32</sup> Roy Stuckey et al, *Best Practices for Legal Education: A Vision and A Road Map* (Clinical Legal Education Association, 2007) <[http://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf)>.

<sup>33</sup> Rachel Field, James Duffy and Anna Huggins, 'Supporting Transition to Law School and Student Well-being: The Role of Professional Identity' (2013) 4 *The International Journal of First Year in Higher Education* 15; Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2014) 13, 332.

<sup>34</sup> Field, Duffy and Huggins (2013), above n, 18.

<sup>35</sup> James and Field, above n 19, 1-38.

<sup>36</sup> Ibid 405-434.

<sup>37</sup> Ibid 435-469.

<sup>38</sup> Kerri-Lee Krause et al, *The First Year Experience from a Decade of National Studies* (Australian Department of Education, Science and Training, 2005) 3; Paula Baron and Lillian Corbin, 'Thinking Like a Lawyer/Acting like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education' (2012) 46 *The Law Teacher* 100; Nick Zepke, 'Student Engagement: A Complex Business Supporting the First Year Experience in Tertiary Education' (2013) 4 *The International Journal of First Year Education* 1; John Gardiner, 'The Senior Year Experience' (1999) *About Campus* 5; M. Lee Upcraft, John Gardner and Betsy Barefoot (eds), *Challenging and Supporting the First-Year Student: A Handbook for Improving the First Year of College* (Wiley, 2005); Susan Armstrong and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 208, 229; Sally Kift, 'Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for the ALTC Senior Fellowship Program' (ALTC, 2009).

<sup>39</sup> Krause et al, above n 38; Field, Duffy and Huggins (2014), above n 33, 19.

<sup>40</sup> See, eg, Armstrong and McNamara, above n 38; Kift, above n 38; Baron and Corbin, above n 38; Claire Macken, 'Student Engagement: The Curricular and Co-Curricula Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 312.

student survey instruments that can be used by staff as benchmarks.<sup>41</sup> The present University Experience Survey<sup>42</sup> involves ‘collecting feedback on key facets of the higher education student experience and, in doing so, obtain important data on the levels of engagement and satisfaction of current commencing and later-year undergraduate students’.<sup>43</sup> This survey, to be updated in 2016, supports further examination of engagement as significant for the first year experience.<sup>44</sup>

First year legal educators have outlined appropriate active learning activities, including those that facilitate staff and student interactions, offer enriching learning experiences and integrated learning within a supportive learning environment.<sup>45</sup> These learning activities include role-play exercises, buzz groups involving small interactive discussions, debating and giving oral presentations in the classroom.<sup>46</sup> Outside the classroom the pedagogical methods can include visits to the court or parliament, interactions with members of the judiciary or politicians and reflective writing or journaling about these experiences.<sup>47</sup> Such activities have been found to assist with foundation law students’ learning and the practice of key skills, including communication and collaboration skills, thinking skills and self-management skills.<sup>48</sup> These skills are integral to effective professional practice and involve understandings of ethical behaviour.

This thesis identifies key skills regarding ethics and professionalism that need to be explicitly included in the curriculum. One of the ethical duties of a lawyer is to the client.<sup>49</sup> Oral communication with clients requires lawyers to actively listen to clients, to be empathetic and to provide clear ethical advice.<sup>50</sup> Lawyers also owe duties to the court, as officers of the court to act with honesty, integrity and candour, to uphold the law and to be fair and honest with dealing with colleagues.<sup>51</sup> All communication between lawyers and other individuals needs to be clear and effective.<sup>52</sup> Thinking skills are vital for both problem solving as a student and for giving advice to clients. Self-management skills are needed in relation to self-reflection about how one identifies as an ethical student and as an

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<sup>41</sup> See, eg, Ali Radloff and Hamish Coates, *Australian Council for Educational Research, Doing More for Learning: Enhancing Engagement and Outcomes, Australasian Student Engagement Report* (Australian Council for Educational Research, 2010) <<http://research.acer.edu.au>>.

<sup>42</sup> Department of Education and Training, *University Experience Survey* <<https://education.gov.au/university-experience-survey>>.

<sup>43</sup> 2014 University Experience Survey National Report, Executive Summary <<https://education.gov.au/university-experience-survey>>.

<sup>44</sup> Department of Education, *Upholding Quality-Quality Indicators for Learning and Teaching* <<https://education.gov.au>>.

<sup>45</sup> Macken, above n 40, 324-325; Patricia Easteal, ‘Teaching about the Nexus between Law and Society: From Pedagogy to Andragogy’ (2008) 18 *Legal Education Review* 163.

<sup>46</sup> Macken, above n 40; Owen and Davis, above n 8.

<sup>47</sup> Macken, above n 40.

<sup>48</sup> See, eg, Sally Kift, Mark Israel and Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010)

<<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>; James and Field, above n 19, Preface xv.

<sup>49</sup> James and Field, above n 19, 435, 458.

<sup>50</sup> Ibid 8.

<sup>51</sup> Ibid 458-459.

<sup>52</sup> Ibid 305.

ethical lawyer.<sup>53</sup> Practicing such skills in class is a pedagogical method to develop professionalism in students and future lawyers together with reflective journaling. Reflective journaling is a pedagogical approach, which allows students to make critically reflective comments about their own learning and intended future practices.

The literature speaks of the need for the foundation year experience to be engaging. There are two requirements of engagement, according to Biggs and Tang<sup>54</sup> the experience must have some value to the learner and second the learner must expect success when engaging in the task.<sup>55</sup> Engagement is linked with involvement, a sense of belonging and engaging with peers in the learning community.<sup>56</sup> Learning from peers can assist in providing a supportive environment, a sense of belonging and learning connected with students' wellbeing and success.<sup>57</sup> Social and academic networking can assist with a sense of belonging and learning.<sup>58</sup> Collaborating with professional bodies can also assist with connectedness with the profession. Literature supports the notion that students are engaged by such connections.<sup>59</sup> It also supports the use of guest lecturers from the profession to assist students in making connections between learning and the real world of legal practice.<sup>60</sup> The norms of the profession are arguably best gleaned from the outlook of some of the professionals within it. These professional perspectives, it is said, give students a 'vision of potential pathways that offer professional meaning and purpose'.<sup>61</sup>

Development of professional identities from the first year of university studies can provide law students with a positive outlook for professional life.<sup>62</sup> Law students are engaged by learning about the roles and responsibilities of their potential future profession.<sup>63</sup> Some first year students enjoy reflecting about lawyers and their roles.<sup>64</sup> Current literature supports the position that it is important to focus on the development of positive professional identities in the first year of university.<sup>65</sup> The development of a positive position encourages students to reflect about what type of lawyer they wish

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<sup>53</sup> Kift, Israel and Field, above n 48, TLO 6; James and Field, above n 19, 343.

<sup>54</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw Hill, 4<sup>th</sup> ed, 2011) 35.

<sup>55</sup> Ibid.

<sup>56</sup> Biggs and Tang, above n 54; Baron and Corbin, above n 38; William Sullivan et al, *Educating Lawyers* (Jossey-Bass, 2007).

<sup>57</sup> Rachael Field, 'Promoting Law Student's Well-being Through the Curriculum' (Final Report on Stimulating Strategic Change in Legal Education to address High Levels of Psychological Distress in Law Students 2014) <<http://eprints.qut.edu.au>> 33; Vincent Tinto, 'Taking Student Retention Seriously: Rethinking the First Year of University' (FYE Curriculum Design Symposium 2009, Brisbane) <<http://www.fyecd2009.qut.edu.au>>.

<sup>58</sup> Keithia Wilson, 'The Impact, Programmatic and Personal Interventions on an Effective and Sustainable First-Year Student Experience' (Paper presented at the Higher Education Conference, Townsville, 2008) <<http://www.griffith.edu.au>>.

<sup>59</sup> Macken, above n 40.

<sup>60</sup> Macken, above n 40; Field, Duffy and Huggins (2014), above n 33.

<sup>61</sup> Macken, above n 40.

<sup>62</sup> James and Field, above n 19, 33-35.

<sup>63</sup> Ibid.

<sup>64</sup> Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse Darkness: Promoting Law Student Well-being Through a First Year Law Subject' (2012) 12 *Queensland University of Technology Law Review* 133.

<sup>65</sup> James and Field, above n 19, 334-335.

to become.<sup>66</sup> Legal educators have an impact on the development of professional identities in law.<sup>67</sup> The literature suggests that it is crucial to equip students with a 'positive professional identity that affirms the role of lawyers as custodians of the rule of law and promoters of social order and justice'<sup>68</sup> as well as informing them of the challenges likely to be faced as lawyers.

There is growing evidence that communities of practice can also assist with developing practice-based skills, which includes the ability to reflect, act and behave professionally and ethically.<sup>69</sup> The communities of practice approach rejects the tradition of viewing the teacher as the primary source of learning and instead focuses on learning as socially constructed through active and collaborative group learning.<sup>70</sup> First year students can gain support through social interactions in the law classroom through working actively in groups in class as well as study groups outside the classroom.<sup>71</sup> Such collaborative and shared learning experiences in the first year of law are endorsed by the research of Kift, James and Field.<sup>72</sup>

This thesis argues that knowledge, understanding and commitment to an ethical and professional position take time for law students to develop.<sup>73</sup> Webb argues that students' ethical perspectives have already been developed prior to attending university and that there is a difference from 'seeing the right to doing the right'.<sup>74</sup> Alternatively, he argues that foundation years may be too early in a law degree to be exploring these issues.<sup>75</sup> Despite this, a law school curriculum committed to the teaching of ethics is argued to be essential.<sup>76</sup> Every legal educator should have the expertise to include ethical components in subjects that do not focus on professional ethics.<sup>77</sup> An introduction to ethics from the first year of a law degree allows students to challenge their learning and reflect on different perspectives, particularly the development of their values.<sup>78</sup> Table 1 summarises the benefits of including ethics and professionalism from the foundation year for both students and educators. Inclusion of the ethics and professionalism in the foundation year is evident in Table 1 as it shows that early pedagogical intervention is important.

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<sup>66</sup> Field and Duffy, above n 64.

<sup>67</sup> Kath Hall, Molly O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2011) *Phoenix Law Review* 19, 35-42.

<sup>68</sup> Penelope Watson and Rachael Field, 'Promoting Student Well-Being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 395.

<sup>69</sup> Cristina Lockwood, 'Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice' (2013) 20 *Clinical Law Review* 95, 107-108.

<sup>70</sup> Ibid 98, 119.

<sup>71</sup> Ibid.

<sup>72</sup> See, eg, Sally Kift and Rachael Field, 'Intentional First Year Curriculum Design as a Means of Facilitating Student Engagement: Some Exemplars' (12th Pacific Rim First Year in Higher Education Conference, Townsville, June 29-July 1, 2009) 7; James and Field, above n 19, 305; Field, above n 57.

<sup>73</sup> Webb, above n 10, 136.

<sup>74</sup> Ibid 139.

<sup>75</sup> Ibid.

<sup>76</sup> Armer, above n 7, 247.

<sup>77</sup> Ibid.

<sup>78</sup> James and Field, above n 19, 435.

**TABLE 1: Benefits for Students and Educators for including Ethics and Professionalism from Foundation Year in Law**

For the Student	For the Educator
To develop self-awareness of the importance of an ethical perspective from the beginning of a degree. <sup>79</sup> For example, communities of practice both within and outside the classroom assist with such perspectives, <sup>80</sup> and enhance student engagement and well-being. <sup>81</sup>	To highlight to students awareness of the importance of an ethical perspective from the beginning of a degree e.g. the problems of making profit and access to justice. <sup>82</sup>
To recognise the multi-dimensional nature of ethics e.g. the importance of the values of ethics. <sup>83</sup>	To teach the multi-dimensional nature of ethics e.g. to assist students to recognise the importance of the values of ethics. <sup>84</sup>
To reflect upon one's individual values, experiences and to continually question and reassess them. <sup>85</sup>	To be aware of where students' identity, experience, and values are situated. <sup>86</sup>
To be engaged by reflecting about ethical issues from an early stage, <sup>87</sup> through an examination of real life experiences, <sup>88</sup> and observation in the courtroom. <sup>89</sup>	To begin to teach reflective skills early. <sup>90</sup>
To acknowledge the nexus between undergraduate behaviour e.g. academic dishonesty and possibly exclusion from practice. <sup>91</sup>	To show students where to find the law relating to professional conduct necessary for entry into and continuation of legal practice. <sup>92</sup>
To assist in the development of a sense of purpose, commitment to justice and consideration of the importance of the role and responsibilities of lawyers in society. <sup>93</sup> Positive identities may assist with student resilience as a future legal practitioner. <sup>94</sup>	To assist law faculties in laying a foundation for a suitable model of incorporating ethics, professionalism and reflection into the curriculum. <sup>95</sup>
To help develop students' contextual awareness and understanding of professional values. <sup>96</sup>	To assist in developing students' understanding that law can be seen as an instrument of power. <sup>97</sup>

<sup>79</sup> Rhode, above n 4.

<sup>80</sup> Lockwood, above n 69.

<sup>81</sup> Field, Duffy and Huggins (2014), above n 33; Field and Duffy, above n 64; James and Field, above n 19, 31-32; Rhode, above n 4.

<sup>82</sup> Rhode above n 3, 2; Rhode, above n 4.

<sup>83</sup> Peter Yeogh, 'Teaching Ethics in Financial Services Law' (March 2010) 44 *The Law Teacher* 65.

<sup>84</sup> Robertson, above n 16, 99; Henriss-Anderson, above n 13; James and Field, above n 19, 435.

<sup>85</sup> Henriss-Anderson, above n 13; James and Field, above n 19.

<sup>86</sup> Ibid.

<sup>87</sup> Armer, above n 7.

<sup>88</sup> Suzette Barnaby, 'Legal Ethics for the Real World: A Model for Engaging First Year Law Students' (2004) 4 *Queensland University of Technology Law and Justice Journal* 219; Rhode, above n 4; Field, Duffy and Huggins, above n 33, 25-26.

<sup>89</sup> Henriss-Anderson, above n 13; Field, Duffy and Huggins (2014), above n 33.

<sup>90</sup> Armer, above n 7.

<sup>91</sup> See, eg, *Re Humzy-Hancock* (2007) QSC 34; *Re AJG* (2004) QCA 88; *Law Society of Tasmania v Richardson* [2003] TASSC 9; *Law Society of Tasmania v Richardson (No 2)* [2003] TASSC 71; *Re OG (A Lawyer)* (2007) 18 VR 164.

<sup>92</sup> Webb, above n 10, 134; Rhode, above n 4.

<sup>93</sup> Henriss-Anderson, above n 13; James and Field, above n 19, 405, 435.

<sup>94</sup> See, eg, James and Field, above n 13, 305, 458; Field, Duffy and Huggins (2014), above n 33.

<sup>95</sup> See Chapter 9, Figure 1; Chapter 9 Table 1.

<sup>96</sup> Maxwell, above n 27, 100; Michael Mushin and Lisa Smith, 'The Professor and the Judge: Introducing First-Year Students to the Law in Context' (2014) 63 *Journal of Legal Education* 481.

<sup>97</sup> Maxwell, above n 27.

### III EXPANDING TRADITIONAL LEGAL PEDAGOGY: ACCESS TO JUSTICE, PROFESSIONAL SKILLS AND PROFESSIONAL IDENTITY

Focusing on professional behaviour and ethics not only serves to discourage unethical behaviour, but to encourage positive professional behaviour.<sup>98</sup> This includes helping members of society to access justice. TLO2 shows the importance of including teaching students about professional responsibility in the ‘promotion of justice and service to the community’.<sup>99</sup> The Stuckey Report recommends that law students need to be more focused on how to provide access to justice, particularly to the middle class.<sup>100</sup> Rhode likewise raises the problems with inadequate access to justice and service to the community in her 2015 book, *The Trouble with Lawyers*.<sup>101</sup>

The current literature recognises the breadth of the responsibility to teach ethics in order to comply with TLO2.<sup>102</sup> The latter also requires a focus on the skills of reflection and judgment relating to the roles and behaviour of lawyers and the practices that good lawyering encompasses.<sup>103</sup> This is supported as best practice by the Stuckey Report, which recommends that ‘law schools should help students acquire self-reflection and an understanding of professional skills and professionalism’.<sup>104</sup> Robertson makes a compelling argument for multiple and different opportunities for learning about ethics within Australian law schools as the foundation for building a professional identity.<sup>105</sup> What is meant in TLO2 by good lawyering, service to justice and the community and duties of ethics is also well-examined and summarised in recent legal education literature by James and Field.<sup>106</sup> Their contextualisation of the role of the good lawyer provides an excellent explanation of what a good lawyer does in terms of helping clients, problem solving, negotiation, grappling with duties of justice, the roles of lawyers and duties of lawyers to the court and community.<sup>107</sup>

The Priestley Committee envisaged eleven compulsory doctrinal content areas to be covered in law school, known as the ‘Priestley 11’.<sup>108</sup> The LACC has suggested that ethics may not be needed within the Priestley 11.<sup>109</sup> This suggestion has been met with criticism.<sup>110</sup> While it is arguable that the ambit of the TLO2 is wide, this thesis argues that ethics should not be removed from the Priestley

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<sup>98</sup> Stuckey et al, above n 32.

<sup>99</sup> Kift, Israel and Field, above n 48, TLO2(c).

<sup>100</sup> Stuckey et al, above n 32, 19.

<sup>101</sup> Rhode, above n 3.

<sup>102</sup> Robertson, above n 16, 107-109; Dal Pont, above n 16, 4-5.

<sup>103</sup> Kift, Israel and Field, above n 48.

<sup>104</sup> Stuckey et al, above n 32, 6.

<sup>105</sup> Robertson, above n 16, 110-112.

<sup>106</sup> James and Field, above n 19, 8-10, 406-410, 458-469.

<sup>107</sup> Ibid.

<sup>108</sup> Developed into the ‘Law Admissions Consultative Committee Uniform Admission Rules 2008’  
<[http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818\\_1\\_LACCUniformAdmissionRules2008.pdf](http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUniformAdmissionRules2008.pdf)>.

<sup>109</sup> ‘Law Admissions Consultative Committee Review of Academic Requirements for Admission to the Legal Profession’  
<[http://www1.lawcouncil.asn.au/LACC/images/pdfs/01.12.14\\_Review\\_of\\_Academic\\_Requirements\\_for\\_Admission.pdf](http://www1.lawcouncil.asn.au/LACC/images/pdfs/01.12.14_Review_of_Academic_Requirements_for_Admission.pdf)>.

<sup>110</sup> Kate Galloway, ‘Changing Academic Requirements for Lawyers: Yes Please!’  
<<http://katgalloway.blogspot.com.au/2014/12/changing-academic-requirements-for.html>>.



requirements, and to this end agrees with the following remarks from Galloway:<sup>111</sup> comments about retaining ethics within the Priestley 11 provide support for this position.<sup>112</sup>

Principles of ethics are central to all professions ... the function of the law system is founded on these principles. Professional responsibility builds on ethics to encompass duties to the court and importantly students find this to be crucial aspect of student engagement.

To omit significantly important areas from undergraduate curricula would signify to students that these essential areas are not significant.

Recommendations from research and policy, over the past three decades, emphasise the importance of legal education as part of the solution towards recognising and improving ethical problems in legal practice.<sup>113</sup> Reformation of law school curricula to focus on ethics and professional responsibility has witnessed recommendation by the judiciary,<sup>114</sup> the profession<sup>115</sup> and government bodies.<sup>116</sup> Consensus on effective reformation strategies, however, appears absent in the literature. Law schools continue to grapple with the most effective ways of changing curricula.<sup>117</sup> The area of ethics and professionalism is diverse in terms of knowledge, skills and values. While legal knowledge can be imparted via traditional law school pedagogy through lectures and tutorials, it is also recognised that innovative pedagogical techniques are well suited for learning and practicing skills and understanding values.<sup>118</sup> Rhode recently argues that little is being done to educate the lecturers about ‘the art of teaching’<sup>119</sup> and that teaching students about values can be done through experiential learning, interactive activities and engagement with practitioners.

Traditional law school pedagogy, with a concentrated focus on legal knowledge, may accordingly not be the only approach for learning about ethics and professionalism.<sup>120</sup> Student-centred learning

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: Australian Government Publishing Service, 1987); Richard Johnstone and Sumitra Vignaendra, ‘*Learning Outcomes and Curriculum Development in Law*’ (Australian Universities Teaching Committee, 2003) <<http://www.cald.asn.au/docs/>>; Owen and Davis, above n 8.

<sup>114</sup> Kirby, above n 22; Kirby, above n 23; Marilyn Warren, ‘Legal Ethics in the Era of Big Business, Globalisation and Consumerism’ (Paper presented at the Joint Law Societies Ethics Forum, Melbourne, 20 May 2010); Justice Debra Mullins, ‘Warts and All: The Impact of Candour in Assessing Character for the Admission to the Legal Profession’ [2008] *Queensland Judicial Scholarship* 77; Justice Murray Gleeson, (Speech delivered at Australian Academy of Law Launch, Government House, Brisbane, 17 July 2007) <<http://www.academyoflaw.org.au>>; Sir Anthony Mason, ‘The Independence of the Bench’ (1993) 10 *Australian Bar Review* 1, 9.

<sup>115</sup> Steve Mark, ‘Re-imagining Lawyering: Whither the Profession?’ (Keynote Address, Australian Academy of Law Symposium, Sydney, 25 July 2008); Mason, above n 115; Anne Trimmer, ‘The State of the Profession’ (Paper Presented at the 32<sup>nd</sup> Legal Convention, Canberra, 11 October 2001) <<http://www.lawcouncil.asn.au>>; Anne Trimmer, ‘Law- A Profession Or Business’ (May 2001) *Australian Lawyer* 2,4; Warren, above n 115, Kirby, above n 22; Kirby, above n 23.

<sup>116</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000).

<sup>117</sup> Owen and Davis, above n 8.

<sup>118</sup> Owen and Davis, above n; Field, Duffy and Huggins (2014), above n 33.

<sup>119</sup> Rhode, above n 3, 143.

<sup>120</sup> Yeoh, above n 83, 59; Robertson, above n 16.

provides potential.<sup>121</sup> A constructivist approach acknowledges the importance of the recognition of the influence of prior learning in order to promote deeper student learning.<sup>122</sup> Traditional methods of teaching law through lectures and tutorials are no longer deemed sufficient by commentators on their own to educate law students.<sup>123</sup> Advances in technology, student demand, the necessity to prepare students for flexible career paths, pressures on law student retention rates and developments in legal education require more innovative pedagogies.<sup>124</sup>

Enhancing law student development of ethics and professionalism is recognised as essential preparation for professional life.<sup>125</sup> One aspect of professionalism is the development of appropriate professional behaviour, attributes and etiquette.<sup>126</sup> This approach should begin in the foundation year, with encouraging student recognition of appropriate behaviour, both as students and later as professionals.<sup>127</sup> Recent research supports the view that students can begin to understand the values of the profession in the foundation year of law.<sup>128</sup> Identification of appropriate professional behaviour within both the courtroom and the classroom provides an important context for developing a deeper understanding of the area. Students' critical reflection on these topics in different environments may also enhance a deeper learning about the subject matter.<sup>129</sup>

#### IV EFFECTIVE WAYS TO INCORPORATE ETHICS AND PROFESSIONALISM INTO THE UNDERGRADUATE LAW CURRICULUM

The following section summarises effective methods of teaching ethics and professionalism in undergraduate law degrees in Australia and the United States.<sup>130</sup> From 2005, the promotion of teaching ethics from foundation years is supported both in Australia and recognised in the United States.<sup>131</sup> There are a variety of ways to incorporate specific components of ethics into the legal

<sup>121</sup> Easta, above n 45, 163.

<sup>122</sup> John Biggs, *Teaching for Quality Learning at University: What the Student Does* (Open University Press, 2<sup>nd</sup> ed, 2003).

<sup>123</sup> See, eg, Mushin and Smith, above n 96, 480, Rhode, above n 3, 7.

<sup>124</sup> Kift, above n 17; Rhode, above n 4.

<sup>125</sup> Mushin and Smith, above n 96.

<sup>126</sup> Owen and Davis, above n 8; Sophie Sparrow, 'Practising Civility in The Legal Writing Course: Helping Students Learn Professionalism' (2007) 13 *The Journal of Legal Writing Institute* 113.

<sup>127</sup> Robertson, above n 16, 110.

<sup>128</sup> Robertson, above n 16; Rhode, above n 4; Mushin and Smith, above n 96, 460, 481; See Table 1.

<sup>129</sup> Karen Hinnett and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002), Preface; John Biggs and Phillip Moore, *The Process of Learning* (Prentice Hall, 3<sup>rd</sup> ed, 1993); Chris Bulman, and Sue Schutz (eds), *Reflective Practice in Nursing* (Wiley-Blackwell, 5<sup>th</sup> ed, 2013) 163; Anne Smith and Kirsten Jack, 'Reflective Practice: A Meaningful Task for Students' (2005) 19 *Nursing Standard* 33; Anne Macduff, 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2006) 14 *Legal Education Digest* 22; Owen and Davis, above n 8, 13.

<sup>130</sup> Heinonline <[home.heinonline.org](http://home.heinonline.org)>; Informit <[search.informit.com.au](http://search.informit.com.au)>; Taylor Frances On-line <[www.tandfonline.com](http://www.tandfonline.com)>.

<sup>131</sup> Mary Lu Bilek, 'First Year Orientation,' International Forum on Teaching Legal Ethics and Professionalism <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Nancy Cook, 'Story Exchange Exercise' International Forum of Teaching Ethics and Professionalism <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Neil Hamilton and Lisa Montpetit Brabbit, 'Fostering Professionalism through Mentoring' (2007) 57 *Journal of Legal Education* 102, Parker and Evans, above n 29; Michael Robertson, 'Providing Ethics Learning Opportunities' (2009) 12 *Legal Ethics* 59; Michelle Sanson, Law Graduate Attributes' Workbook <[www.griffith.edu.au](http://www.griffith.edu.au)>.

curriculum, including multi-faceted approaches of Owen and Davis.<sup>132</sup> Their Australian report includes assessments tasks for ethics, group work, reflection and role-play. It recommends teaching ethics via lectures, small group work, feedback, written or oral presentations and problem solving.<sup>133</sup> Traditional lectures are still recommended but less traditional pedagogical techniques play a more prominent role.<sup>134</sup> Engaging, authentic settings through both simulations and real world experiences are supported in the literature.<sup>135</sup> Guest lecturers or mentors are seen as valuable for learning.<sup>136</sup> The promotion of class dialogue,<sup>137</sup> the use of popular culture,<sup>138</sup> and small group work are highly recommended.<sup>139</sup> Virtual on-line games,<sup>140</sup> reflective exercises,<sup>141</sup> role-play<sup>142</sup> and problem-solving activities are promoted.<sup>143</sup>

From 2010 onwards teaching ethics and professionalism from the foundation year continues to be recommended.<sup>144</sup> Classroom interaction is highly promoted.<sup>145</sup> Popular teaching methods include various types of group work including role-play and simulations.<sup>146</sup> The use of popular culture remains recommended with other techniques including debates,<sup>147</sup> reading cases through an ethical lens,<sup>148</sup> case studies<sup>149</sup> and reflection.<sup>150</sup> Experiences outside the classroom in the courtroom as well as inside the classroom are also more recently endorsed.<sup>151</sup>

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<sup>132</sup> Owen and Davis, above n 8.

<sup>133</sup> Ibid 69.

<sup>134</sup> Lonnie Brown, Jr, 'Lawyers Not Liars: A Modified Traditionalist Approach to Teaching Legal Ethics' (2007) 51 *Saint Louis University Law Journal* 1119; Rhode, above n 4, 31, Henriss-Anderson, above n 13; Kelly Terry, 'Externships: A Signature Pedagogy' (2009) 59 *Journal of Legal Education* 240; Bilek, above n 132; Parker and Evans, above n 29.

<sup>135</sup> Des Butler, 'Technology: New Horizons in Law Teaching' in Kift et al (ed), above n 5, 490; Brown, above n 135; Bilek, above n 132, Cook, above n 132; Parker and Evans, above n 29; Sanson, above n 132; Robertson, above n 132; Margaret Castles, Maureen Goldfinch and Anne Hewitt, 'Using Simulated Practice to Teach Legal Theory: How and why Skills and Group Work can be Incorporated into the Academic Legal Curriculum' (2007) 26 *University of Tasmania Law Review* 120.

<sup>136</sup> Castles, Goldfinch and Hewitt, above n 136; Rhode, above n 3; Hamilton and Brabbit, above n 132.

<sup>137</sup> Brown, above n 135; Cook, above n 132; Rhode, above n 3.

<sup>138</sup> Brown, above n 135, Rhode, above n 3, Robertson, above n 132.

<sup>139</sup> Brown, above n 135; Rhode, above n 3; Castles, Goldfinch and Hewitt, above n 136; Bilek, above n 132; Parker and Evans, above n 29; Cook, above n 132; Robertson, above n 132.

<sup>140</sup> Butler, above n 136, 490; Cook, above n 132.

<sup>141</sup> Rhode, above n 4; Parker and Evans, above n 29.

<sup>142</sup> Rhode, above n 4; Robertson, above n 132.

<sup>143</sup> Sanson, above n 132; Butler, above n 136.

<sup>144</sup> Armstrong and McNamara, above n 38; Claire Macken and Madeleine Dupuche, *Law Essentials: Foundations in Australian Law* (LawBook, 2012); Maxwell, above n 27; Mushin and Smith, above n 96; Rhode, above n 4.

<sup>145</sup> Armstrong and McNamara, above n 38; John Ratnaswamy, 'Teaching Ethics Through Simulation Method' *The Benchers* (2011) <[www.innsofcourt.org/Content/Default.aspx?Id=5944](http://www.innsofcourt.org/Content/Default.aspx?Id=5944)>; Bobbi Boyd, 'Name that Sanction,' International Forum of Teaching Ethics and Professionalism, <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Linda Haller, 'Reading Reported Cases through a Legal Ethics Lens' in Michael Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 191; Macken and Dupuche, above n 147; Mushin and Smith, above 94; Rhode, above n 4.

<sup>146</sup> Macken and Dupuche, above n 147, Paula Baron, 'The Emperor's New Clothes: From Atticus Finch to Denny Crane' in Francesca Bartlett, Reid Mortensen and Kieran Tranter (eds) *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2011) 85; Ratnaswamy, above n; Boyd, above n; Rhode, above n 4.

<sup>147</sup> Armstrong and McNamara, above n 38; Macken and Dupuche, above n 147, Baron, above n 147; Field, Duffy and Huggins (2014), above n 33, 13; Ratnaswamy, above n 146.

<sup>148</sup> Haller, above n 146.

<sup>149</sup> Ibid.

<sup>150</sup> Vivien Holmes and Simon Rice, 'The Imperative for Contextual Ethics in a Connected World' in Francesca Bartlett, Reid Mortensen and Kieran Tranter, *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2011) 75; Rhode, above n 4.

<sup>151</sup> Mushin and Smith, above n 96; Rhode, above n 4; Field, Duffy and Huggins (2014), above n 33, 25-26.

## V CONCLUSION

While ethics and professionalism have been incorporated into the undergraduate legal curriculum in a discrete way through traditional pedagogy, this chapter endorses a pervasive approach to teaching ethics from the foundation year of law.<sup>152</sup> The literature supports the view that pedagogical techniques linked with the pervasive approach should become more interactive and multi-faceted. Real life court visits and interactions inside and outside the classroom should also be part of the learning experience.<sup>153</sup> Student engagement with ethics and professionalism can be enhanced through the use of popular culture<sup>154</sup> and role-play.<sup>155</sup> The thesis also supports the use of reflective journals for critical reflection and analysis of legal ethics and professional roles.<sup>156</sup> The literature demonstrates that foundation students are able to use journaling to reflect critically on real court experiences and popular culture.<sup>157</sup> The importance of critical reflection as having potential for teaching and learning for foundation law students is examined in the next chapter.<sup>158</sup>

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<sup>152</sup> Chapter 3 I-IV.

<sup>153</sup> Mushin and Smith, above n 96; Rhode, above n 4; Field, Duffy and Huggins (2014), above n 33, 25-26.

<sup>154</sup> Chapter 2 IV.

<sup>155</sup> Ibid.

<sup>156</sup> Chapter 4 II A; Chapter 4 III D; Chapter 4 III I; Chapter 5 I-VI.

<sup>157</sup> Ibid.

<sup>158</sup> Critical reflection is the subject of Chapter 4 and reflective journaling is the subject of Chapter 5.

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*Re OG (A Lawyer)* (2007) 18 VR 164

# CHAPTER 4: CRITICAL REFLECTION IN LEGAL EDUCATION

## I INTRODUCTION

The first section of the chapter defines critical reflection and examines the difference between reflection in everyday life and reflection in academic contexts. Recent multi-disciplinary support for critical reflection is examined and its importance in the legal academic context outlined.<sup>1</sup> The thesis argues that as critical reflection forms part of the TLOs in law it must be included in the legal curriculum.<sup>2</sup> This section examines the nature of critical reflection and its interrelationship with critical thinking within the TLOs.<sup>3</sup> It outlines useful components of Ryan and Ryan's '4R'<sup>4</sup> model of critical reflection. It also locates the reflective journal as an effective tool, which can be used by foundation students to develop critical reflection skills. This chapter argues for the incorporation of critical reflection into law schools and critically analyses different reflective taxonomies in order to examine which elements of those taxonomies are suitable for foundation year legal education. It also argues that instruction and guidance about critical reflection should be integral to undergraduate law programs.

The second section of the chapter critically examines different views of reflection developed by educational theorists. It examines the applicability of the academic literature for the development of a reflective model in foundation law. The third and final section evaluates key components of existing taxonomies with the aim to develop a reflective taxonomy for foundation law students. Dewey's work, which focuses on the importance of experiences, observation and self-awareness as part of reflective learning,<sup>5</sup> supports the use of reflective journaling as a pedagogical tool.<sup>6</sup> Reflection-in-action and reflection-on-action is integral to the experiential learning activities of Schon<sup>7</sup> whereas experience and the context in which the experience takes place together with transformation are derived from the work of Hinett and Varnava.<sup>8</sup> Moon supports context as part of critical reflection and maintains that transformation is at the highest level of critical reflection within her five-stage model,

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<sup>1</sup> Neville Hatton and David Smith 'Reflection in Teacher Education: Towards Definition and Implementation' <Reflection%20in%20Teacher%20Education.webarchive>; Michele Leering, 'Conceptualizing Reflective Practice for Legal Professionals' (2014) 23 *Journal of Law and Social Policy* 83; Deborah Rhode, *The Trouble with Lawyers* (Oxford University Press, 2015).

<sup>2</sup> Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

<sup>3</sup> Ibid.

<sup>4</sup> Mary Ryan and Michael Ryan, *Developing Reflective Approaches to Writing* (2012) <<http://www.qut.edu.au/research>>.

<sup>5</sup> John Dewey, *Experience and Education* (Collier MacMillan, 1938); Kurt Lewin, *Field Theory in Social Science-Selected Theoretical Papers* (Tavistock, 1959); David Kolb, *Experiential Learning: Experience as The Source of Learning and Development* (Prentice-Hall, 1984) 21.

<sup>6</sup> Above n.

<sup>7</sup> Donald Schon, *The Reflective Practitioner* (Basic Books, 1983).

<sup>8</sup> Karen Hinett and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002).

providing support for the use of transformation as important for critical reflection.<sup>9</sup> Analysis and evaluation as higher levels in Bloom's taxonomy of higher order thinking are emphasised.<sup>10</sup> The contribution of the work of Hatton and Smith is described in terms of the importance of supporting instruction and guidance for critical reflection together with adding a broader contextual aspect to reflective practice.<sup>11</sup> Their work has the potential to inform pedagogy in ways, which increase the awareness of foundation law students' knowledge about the differences between forms of reflective writing, descriptive reflection and critical reflection. The complex nature of reflective practice is also evident in the work of the influential work of Boud, Keogh and Walker, which provides for structured reflection.<sup>12</sup> The simplicity of the prompt-based models of reflection, however, is outlined in terms of their application for foundation law students' learning, through the work of Gibbs,<sup>13</sup> Waye and Faulkner,<sup>14</sup> and Cottrell.<sup>15</sup> These various components of reflection are analysed in this chapter and are incorporated into the findings of the thesis contained in chapter 9.

## II DEFINING REFLECTION IN THE ACADEMIC CONTEXT: SUPPORTING REFLECTIVE PRACTICE IN LEGAL EDUCATION

Reflection in an everyday context and critical reflection for academic purposes are different and potentially contradictory.<sup>16</sup> In an everyday context, reflection is associated with being engaged in thought, daydreaming or thinking about an event.<sup>17</sup> In contrast, in the academic context critical reflection is structured, focused and conscious, with the aim to develop a critical understanding.<sup>18</sup> Moon has defined academic reflection as a 'form of mental processing - a form of thinking - that we use to fulfil a purpose or to achieve some anticipated outcome. It is applied to complicated and unstructured ideas to which there is no obvious solution of constructive use'.<sup>19</sup> Academic support of reflective practice and the influences of various taxonomists are catalogued in Table 1.<sup>20</sup>

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<sup>9</sup> Jennifer Moon, *Learning Journals: A Handbook for Academics, Students and Professional Development* (Kogan Page, 1999); Jennifer Moon, *Critical Thinking: An Exploration of Theory and Practice* (Routledge, 2007).

<sup>10</sup> Benjamin Bloom, *Taxonomy of Educational Objectives* (Longmans-Green, 1956).

<sup>11</sup> Hatton and Smith, above n 1.

<sup>12</sup> David Boud, Rosemary Keogh and David Walker, *Reflection: Turning Experience into Learning* (Kogan Page, 1985); David Boud and David Walker, 'Promoting Reflection in Professional Courses: the Challenge of Context' (1998) 23 *Studies in Higher Education* 191.

<sup>13</sup> Graham Gibbs, *Learning by Doing: A Guide to Teaching and Learning Methods* (Oxford Brookes University, 1988).

<sup>14</sup> Vicki Waye and Margaret Faulkner, 'E-Portfolios and Legal Professional Attributes' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 239.

<sup>15</sup> Stella Cottrell, *Critical Thinking Skills-Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011).

<sup>16</sup> Ibid 208.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Moon (1999), above n 9, 23.

<sup>20</sup> Stella Cottrell, *Study Skills* (Palgrave Macmillan, 4<sup>th</sup> ed, 2013).

**TABLE 1: Examples of Endorsement of Reflective Practice in Academia**

Authors	Influences of Taxonomists	Disciplines
Field, Duffy & Huggins 2014 <sup>21</sup>	Includes Ryan & Ryan <sup>22</sup>	Law
Leering 2014 <sup>23</sup>	Includes Schon <sup>24</sup>	Law
James & Field 2013 <sup>25</sup>	Ryan & Ryan <sup>26</sup>	Law
Bulman & Schutz 2013 <sup>27</sup>	Includes Dewey, <sup>28</sup> Schon <sup>29</sup> & Brookfield <sup>30</sup>	Nursing
McNamara, Cockburn & Campbell 2013 <sup>31</sup>	Includes Dewey, <sup>32</sup> Schon <sup>33</sup> & Ryan & Ryan <sup>34</sup>	Law
Waye & Faulkner 2011 <sup>35</sup>	Gibbs <sup>36</sup>	Law
Sherwood & Horton-Deutch 2012 <sup>37</sup>	Includes Dewey <sup>38</sup> & Schon <sup>39</sup>	Nursing
Liston & Zeichner 2011 <sup>40</sup>	Include Dewey <sup>41</sup> & Schon <sup>42</sup>	Teaching
Heath 2011 <sup>43</sup>	Includes Brookfield <sup>44</sup>	Law

*A The Advantages of Learning Reflective Skills from the Foundation Years of Law*

The TLOs within the Standards Statement for Law are intended to provide minimum standards of performance, achievement or attainment at the bachelor qualification level.<sup>45</sup> Two of the six TLOs for graduates of the Bachelor of Law degrees in Australia relate to reflection.<sup>46</sup> TLO2(b) relates to ‘reflecting upon ethical issues likely to arise in professional contexts’<sup>47</sup> whereas TLO2(c) relates to ethics and professional responsibility and requires demonstration of ‘an ability to recognize and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community’.<sup>48</sup> TLO6(b) specifies that

<sup>21</sup> Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2014) 107.

<sup>22</sup> Ryan and Ryan, above n 4.

<sup>23</sup> Leering, above n 1.

<sup>24</sup> Schon, above n 7; Leering, above n 1.

<sup>25</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 356-358.

<sup>26</sup> Ryan and Ryan, above n 4.

<sup>27</sup> Chris Bulman and Sue Schutz (eds), *Reflective Practice in Nursing* (Wiley-Blackwell, 5<sup>th</sup> ed, 2013).

<sup>28</sup> Dewey, above n 5.

<sup>29</sup> Schon, above n 7.

<sup>30</sup> Stephen Brookfield, *The Skillful Teacher* (Jossey-Bass, 1990).

<sup>31</sup> Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (ALTC, 2013) <<http://www.lawteachnetwork.org/resources/gpg--reflection.pdf>>.

<sup>32</sup> Dewey, above n 5.

<sup>33</sup> Schon, above n 7.

<sup>34</sup> Ryan and Ryan, above n 4.

<sup>35</sup> Waye and Faulkner, above n 14.

<sup>36</sup> Gibbs, above n 13.

<sup>37</sup> Gwen Sherwood and Sarah Horton-Deutch, *Reflective Practice: Transforming Education and Improving Outcomes* (Renee Wilmeth, 2012).

<sup>38</sup> Dewey, above n 5.

<sup>39</sup> Schon, above n 7.

<sup>40</sup> Kenneth Zeichner and Daniel Liston, *Reflective Teaching: An Introduction* (Routledge, 2011).

<sup>41</sup> Dewey, above n 5.

<sup>42</sup> Schon, above n 7.

<sup>43</sup> Mary Heath, ‘Assessment Strategies’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 272.

<sup>44</sup> Brookfield, above n 30.

<sup>45</sup> Kift, Israel and Field, above n 2.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

graduates should not only be able to learn and work independently but also ‘reflect on and assess their own capabilities and performance, and make use of feedback as appropriate to support personal and professional development’.<sup>49</sup> TLO3, moreover, targets thinking skills, including critical analysis and the development of a critical disposition.<sup>50</sup> There is nonetheless little consistency in how to implement the TLOs.<sup>51</sup> Methods to implement reflective practice are varied, particularly in light of the multiple definitions of reflection and the different reflective taxonomies, addressed further in this chapter.<sup>52</sup>

Teaching, learning and assessment activities are not prescribed within the Standards Statement.<sup>53</sup> The Good Practices Guide (GPG) provides some examples of the ways in which reflection can be both understood and taught<sup>54</sup> from the foundation year.<sup>55</sup> Learning and teaching activities include the use of reflective journals, e-portfolios, blogs, wikis, role-plays and discussion groups.<sup>56</sup> ‘Although the use of journals and e-portfolios dominate reflective practice approaches in higher education, the use of blogs, wikis, role-plays and discussion groups are growing in popularity’.<sup>57</sup> Students use reflective journals to reflect on their learning and the law course, analyse court observations and critically appraise guest speakers.<sup>58</sup> Journals can be hand written or typed and students can reflect through creative writing or drawing. Entries can be continuous and students can reflect on their reflections. If students are assessed on a reflective journal, they can select excerpts, which address the assessment criteria. Guided reflective journaling, it is argued, helps facilitate independent learning through enabling students to make connections between the university classroom and the real world, allowing students to recognise their own strengths and weaknesses whilst critically reflecting on their learning progress.<sup>59</sup>

*The New Lawyer* is a comprehensive text for first year law students, which offers strategies and exercises for law students in relation to learning and understanding about critical reflection.<sup>60</sup> It suggests writing reflectively and utilising feedback are effective learning strategies.<sup>61</sup> In this way it promotes the use of informal student journaling containing personal

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> See, eg, Michael Robertson, ‘Embedding ‘Ethics’ in Law Degrees’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 115; McNamara, Cockburn and Catherine Campbell, above n 31.

<sup>52</sup> Bulman and Schutz, above n 27; McNamara, Cockburn and Catherine Campbell, above n 31.

<sup>53</sup> Kift, Israel and Field, above n 2.

<sup>54</sup> McNamara, Cockburn and Catherine Campbell, above n 31.

<sup>55</sup> QUT, Wiki <file://localhost/<https://wiki.qut.edu.au:display:draw:Home>.

<sup>56</sup> McNamara, Cockburn and Campbell, n 31, 8.

<sup>57</sup> Ibid 9.

<sup>58</sup> See, eg, James and Field, above n 25, 297.

<sup>59</sup> James and Field, above n 25, 351.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

reflections, as well as journaling for developing a critical disposition.<sup>62</sup> Future career reflection is an excellent example of the importance of context given that students can have misconceptions from perspectives drawn from popular culture.<sup>63</sup> Similarly, educators can use the critical reflections of both students and their own reflections to transform and improve legal pedagogy.<sup>64</sup> The research to follow in this thesis, informed by the research of others, explores how critical reflection can be improved with the use of appropriate instruction and guidance for students. It also shows how critical reflection about ethics and professionalism can be achieved through reflective journaling.

### B *Critical Thinking and Critically Reflective Skills: Ryan and Ryan's Position*

Components of reflective practice include essential critical thinking skills relevant to legal practice, which can be developed from the foundation year. Such critical thinking skills form part of TLO<sup>65</sup> and include interpretation, analysis, evaluation, inference, explanation and self-regulation.<sup>66</sup> A number of these critical thinking skills, such as analysis and evaluation, are included in the '4R'<sup>67</sup> model of reflection developed by Ryan and Ryan. The model has proven influential in legal education.<sup>68</sup> The GPG favours this framework consisting of reporting and responding, relating, reasoning and reconstructing to provide structure and guidance about reflection in four stages.<sup>69</sup> The first R in the model relates to reporting and responding.<sup>70</sup> It includes reporting about first year experiences in the form of first person journal accounts. The second R relates to and makes connections with past and new experiences.<sup>71</sup> Self-reflective journaling helps develop a critical disposition, including recording when one has to modify one's own beliefs and assumptions when confronted with new ideas.<sup>72</sup> This is particularly appropriate to foundation year experiences given that education about lawyers is at an early stage. The third R targets reasoning. It assists with highlighting significant issues arising from the reflection to explain and analyses their importance from different perspectives.<sup>73</sup> Foundation students may need to be taught explicitly how to analyse critically, as they may not already have received instruction on this.

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<sup>62</sup> Ibid 297.

<sup>63</sup> QUT, above n 54.

<sup>64</sup> Filippa Marullo Anzalone, 'Education for the Law: Reflective Education for the Law' in Nona Lyons (ed), *Handbook of Reflection and Reflective Inquiry: Mapping a Way of Knowing for Professional Reflective Inquiry* (Springer, 2010) 85.

<sup>65</sup> Kift, Israel and Field, above n 2.

<sup>66</sup> American Philosophical Association, *Critical Thinking: A Statement of Expert Consensus for the Purposes of Educational Assessment and Instruction* (California Academic Press, 1990).

<sup>67</sup> Ryan and Ryan, above n 4; McNamara, Cockburn and Campbell above n 31; James and Field, above n 25, 356-357.

<sup>68</sup> Table 1.

<sup>69</sup> McNamara, Cockburn and Campbell, above n 31, 7.

<sup>70</sup> James and Field, above n 25, 356.

<sup>71</sup> Ryan and Ryan, above n 4.

<sup>72</sup> James and Field, above n 25, 297.

<sup>73</sup> Ibid 357.

The fourth R refers to reconstructing.<sup>74</sup> It involves rethinking the ideas and developing a transformed approach about ideas for the future.<sup>75</sup> Such a process involves evaluation. Evaluation is an important component to include in a reflective model for foundation law students as it is highly regarded as an essential academic skill.<sup>76</sup>

### III TAXONOMIES OF REFLECTION: LESSONS FOR LEGAL EDUCATORS FROM REFLECTIVE TAXONOMISTS

Elements of key taxonomies are examined in this thesis to assess their suitability for inclusion within a critically reflective model for legal education.<sup>77</sup> A number of reflective taxonomies have been developed over time and across disciplines, with structural diversity shown in terms of constructions of learning, levels of reflection and orientation.<sup>78</sup> Single and double loop, staged and prompt-based taxonomies are dominant models.<sup>79</sup> Looping and the use of a staged approach refer to reflective processes whereas prompt-based taxonomies refer to a series of prompt-based questions as part of the model. There is no theoretical consensus on the crucial elements of critical reflection.<sup>80</sup>

A single model of reflection does not dominate reflective practice in legal education, although the Ryan and Ryan 4R model is becoming more commonly used in legal education.<sup>81</sup> This suggests that a choice of taxonomy or the type of elements to be included within it depends on the purpose of the reflection.<sup>82</sup> Elements common to reflection include experience,<sup>83</sup> observation,<sup>84</sup> interpretation of or returning to experience,<sup>85</sup> deepening understanding or learning,<sup>86</sup> self-awareness of learning,<sup>87</sup> thinking,<sup>88</sup> acknowledgement of a problem,<sup>89</sup>

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<sup>74</sup> Ryan and Ryan, above 4.

<sup>75</sup> James and Field, above n 25, 358.

<sup>76</sup> Bloom, above n 10; Bulman and Schutz, above 27; Cottrell, above n 20.

<sup>77</sup> Chapter 9 Figure 1 and Table 1 includes experience, evaluation, analysis, context and transformation.

<sup>78</sup> Anne Brockbank and Ian McGill, *Facilitating Reflective Learning Through Mentoring & Coaching* (Kogan Page, 2006) 34.

<sup>79</sup> Ibid.

<sup>80</sup> Chris Bulman, 'An Introduction to Reflection' in Bulman and Schutz, above n 27, 1, 5, 6; McNamara, Cockburn and Campbell, above n 31.

<sup>81</sup> See, eg, Table 1; Ryan and Ryan, above n 4; Kift et al, above n 14; Leering, above n 1; McNamara, Cockburn and Campbell, above n 31.

<sup>82</sup> Waye and Faulkner, above n 14, 251; Cottrell, above n 20, 208.

<sup>83</sup> Dewey, above n 5; Cottrell, above n, 208; Waye and Faulkner, above n 14, 250; Kolb, above n 5, 21; David Boud, Rosemary Keogh and David Walker, *Reflection: Turning Experience into Learning* (Kogan Page, 2<sup>nd</sup> ed, 1988) 7, 8; Sue Atkins and Sue Schutz, 'Developing skills for reflective practice' in Bulman and Schutz, above n 27, 47; Chris Bulman, 'Getting started on a journey with reflection,' in Bulman and Schutz, above 27, 226.

<sup>84</sup> Above n.

<sup>85</sup> Cottrell, above n 20, 208-209; Waye and Faulkner, above n 14, 250; Schon, above n 7, 9.

<sup>86</sup> Cottrell, above n, 208; Moon (2007), above n 9.

<sup>87</sup> Waye and Faulkner, above n 14, 250; Bulman and Schutz, above n 27, 28, 230.

<sup>88</sup> Waye and Faulkner, above n; Hinett and Varnava, above n 8, 3.

<sup>89</sup> Dewey, above n 5.



questioning,<sup>90</sup> problem solving,<sup>91</sup> knowledge building,<sup>92</sup> improvement of practice,<sup>93</sup> transformation,<sup>94</sup> evaluation,<sup>95</sup> and contextualising experiences from different perspectives.<sup>96</sup>

### *A Learning from Experience, Observations and Self-Awareness*

This section explores how experiences, observation and self-awareness play a role in learning. Experience in or observations of professional practice offer a learning environment where a student can experience and identify critical aspects of the work.<sup>97</sup> These aspects of the work include the use of professional roles, development of professional behaviour, decision-making and the efficiency of the workplace. Dewey defines reflective thought as ‘active, persistent, and careful consideration of any belief or supposed form of knowledge in light of the ground that supports it, and the further conclusions to which it tends’.<sup>98</sup> He emphasises the importance of past experience, actual experience and education.<sup>99</sup> The focus is on the student’s own experiences as central for learning. Here and now experience forms the basis for observations and reflections. Kolb’s work supports this view.<sup>100</sup> Observations and reflections can then be used to develop new applications for action, which can then be used as a guide to create new experiences.<sup>101</sup>

Dewey’s work continues to be highly relevant in university contexts, particularly in relation to self-awareness about ethics and professional perspectives.<sup>102</sup> It supports pedagogical techniques, which involve critical reflection. Recent focus on student-centred learning recognises the importance of promoting a less traditional more innovative, diverse student-centred law school curriculum.<sup>103</sup> This approach, which includes reflective journaling, allows students to write, expressing their own ideas, views and interests. Dewey’s work, together with the more recent work of others, also promotes self-awareness as an important skill component of reflection.<sup>104</sup> It maintains the importance of students being self-aware of their

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<sup>90</sup> Terry Borton, *Read, Touch and Teach* (Hutchinson, 1970); John Driscoll, ‘Reflective Practice for Practice’ (1994) 23 *Senior Nurse* 47; Cottrell, above n 20; Christopher Johns and Dawn Freshwater, *Transforming Nursing Through Reflective Practice* (Blackwell, 1998); Gary Rolfe, Dawn Freshwater and Melanie Jasper, *Critical Reflection for Nursing and the Helping Professions* (Palgrave, 2001).

<sup>91</sup> Dewey, above n 5; Schon, above n 7, 9, 11.

<sup>92</sup> Cottrell, above n 20, 208, 209; Bulman and Schutz, above n 27, 230.

<sup>93</sup> Kolb, above n 5; Schon, above n 7; Bulman and Schutz, above n 27, 230.

<sup>94</sup> Waye and Faulkner, above n 14, 250; Kolb, above n 5; Bulman and Schutz, above n 27, 230; Johns and Freshwater, above n 90.

<sup>95</sup> Bloom, above n 10.

<sup>96</sup> Boud, Keogh and Walker, above n 84; Hatton and Smith, above n 1.

<sup>97</sup> Hinett and Varnava, above n 8, 3.

<sup>98</sup> Dewey, above n 5.

<sup>99</sup> *Ibid* 20.

<sup>100</sup> Kolb, above n 5, 21.

<sup>101</sup> *Ibid*.

<sup>102</sup> Dewey, above n 5.

<sup>103</sup> Richard Johnstone, ‘Whole-of Curriculum Design in Law’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 5.

<sup>104</sup> Bulman and Schutz, above n 27; Leering, above n 1.

ethical and professional perspectives as well as the perspectives of others within the profession so that such development may guide them when faced with ethical issues or problems.

*B Experiential Learning: The Advantages of Reflecting About Practical Legal Experiences for Learning about Ethics and Professionalism*

This research in this thesis, informed by the research of others, explores how real life experiences are important for student development in an understanding of ethical and professional issues. It explores how these experiences influence students' engagement with and appreciation of guest lecturers, supportive dialogue and interaction within tutorials, court visits and popular culture.<sup>105</sup> Experiential learning can start in the foundation years. Learning from a variety of formal and informal experiences can be engaging and transformative for students.<sup>106</sup> Law students need to have real experiences of the practice of law in order to learn about it.<sup>107</sup> Examples of such experiences include 'court visits, advocacy exercises, role-plays, mooting, prison visits, work experiences at legal offices and formal internships'.<sup>108</sup> The experiences provide excellent material for reflection. Once students become more reflective they are:

... more likely to become reflective practitioners who are more able to learn from experience; cope with uncertainty and anxiety; exercise sound judgment; assess their own skills and abilities; develop career goals and plans and implement strategies to achieve those goals; accept critical feedback; and continue to improve skills and aptitudes.<sup>109</sup>

*C Reflection-In-Action and Reflection-On-Action: Instruction and Guidance with Professional Skills*<sup>110</sup>

The coaching approach towards learning and reflection suggested by Schon reveals the importance of explicit instruction and guidance in education.<sup>111</sup> It relates to practitioners building up a repertoire of experiences from which they can draw upon by using and applying reflection on experience to improve action and professionalism.<sup>112</sup> *The Reflective Practitioner*<sup>113</sup> develops a model, which includes the phases of reflection-in-action, where

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<sup>105</sup> Chapter 7 III-IV; Chapter 8 III A, Chapter 8 III B; Chapter 8 IV-V.

<sup>106</sup> Kelley Burton and Judith McNamara, 'Assessing Reflection Skills in Law Using Criterion-Referenced Assessment' (2009) 19 *Legal Education Review* 171.

<sup>107</sup> *Ibid* 177.

<sup>108</sup> *Ibid*.

<sup>109</sup> Judith McNamara and Rachael Field, 'Designing for Reflective Practice in Legal Education' (2007) 2 *Journal of Learning Design* 66.

<sup>110</sup> See, eg, Linda Valli, 'Moral Approaches to Reflective Practice' in Renee Clift, Robert Houston and Marleen Pugach (eds), *Encouraging Reflective Practice in Education: An Analysis of Issues and Programmes* (Teachers College Press, 1990) 39.

<sup>111</sup> Schon, above n 7.

<sup>112</sup> *Ibid*.

<sup>113</sup> *Ibid*.

practitioners draw on tacit knowledge to solve immediate problems<sup>114</sup> and reflection-on-action for retrospective thinking about the event.<sup>115</sup> Schon's typology has been successful in assisting the development of reflection-in-action for students.<sup>116</sup>

The processes of reflection-in-action and reflection-on-action have pedagogical value and could be incorporated into legal curricula. Schon has also been used successfully in the work of Valli to show the effectiveness of Schon's typology in assessing student reflection.<sup>117</sup> Minott also successfully applied Valli's work because of its ease of application, its standardisation for assessment and its usefulness as a tool to analyse journals through the process of reflection.<sup>118</sup> Where a course contains practical skills such as participation in oral presentations, moots, debates and group problem solving, reflection-in-action is appropriate. Undergraduate law students who are required to do oral presentations may also develop the ability to reflect-in-action and link theory, practice and feedback as part of their reflective experiences. Further reflection-on-action is suited to drawing on experiences. Reflective journaling is a technique in which reflection-on-action can be used. Incorporating activities, which promote reflection-in-action and reflection-on-action, can be valuable for students to practice reflective skills.

#### *D Contextual and Transformative Learning Cycles for Legal Education*

A transformative taxonomy should be considered by legal educators to assist students to develop critical thinking skills.<sup>119</sup> Hinett and Varnava define reflective practice as more than an experienced based approach and is transformative.<sup>120</sup> Learning, they argue, is part of a process, which is individual, contextual, relational and developmental.<sup>121</sup> 'A work placement is an obvious learning experience upon which the student can reflect'<sup>122</sup> but there 'is no right or known experience from which learning can hinge, it is simply that the student is encouraged to think about how and what he or she now understands has changed from what he or she knew before the lecture, discussion, placement, project or visit to the law court'.<sup>123</sup> Such a transformative approach has merit because it shows a pathway of learning, acquiring information, ideas and the transformation of those ideas. This can be done from the

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<sup>114</sup> Schon, above n 7, 50.

<sup>115</sup> Anne Hume, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 *Higher Education Research and Development* 247.

<sup>116</sup> Frederick King and Dianna LaRocco, 'E-Journaling: A Strategy to Support Student Reflection and Understanding' (2006) 9 *Current Issues in Education* 10-11.

<sup>117</sup> Linda Valli, 'Listening to Other Voices: A Description of Teacher Reflection in the United States' (1997) 72 *Peabody Journal of Education* 67.

<sup>118</sup> Mark Minott, 'Valli's Typology of Reflection And Analysis of Pre-Service Teachers' Reflective Journals' (2008) 33 *Australian Journal of Teacher Education* 55.

<sup>119</sup> Hinett and Varnava, above n 8.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid 3.

<sup>123</sup> Ibid.

foundation year provided adequate time is allocated to provide clear and explicit instruction to students about reflection and transformation. The expected form and components of critically reflective writing need to be communicated to law students in order for them to be able to understand and develop critically reflective skills. Capturing observations, experiences and reflecting upon them can be done using a reflective journal.

Moon indicates that critically reflective learning represents the highest level of deep learning, which she calls ‘transformative learning’.<sup>124</sup> She devises five stages of learning.<sup>125</sup> She argues that exposure to higher levels of activity will move students forward until transformative learning is achieved.<sup>126</sup> Moon discusses the overlap between critical thinking and reflection, maintaining at the deep level of both there is a conscious acceptance of multiple perspectives and engagement with prior experience that takes into account the broader context of the issues.<sup>127</sup> She maintains that critical thinking is aimed at reaching a judgment through evaluation of evidence whereas this may not be the case with reflection.<sup>128</sup> Reflection can be more concerned with the exploration of ideas and more involved with self.<sup>129</sup> She also contends that critical reflection involves critical thinking and its forms of action include reflective practice.<sup>130</sup>

Moon identifies persuasive arguments for the use of reflective journaling for the development of critically reflective work, describing learning journals as ‘containers for reflective work’.<sup>131</sup> These may be designed to underpin critical thinking activities and the thinking place for research projects.<sup>132</sup> She maintains that educators should encourage students to engage in thinking.<sup>133</sup> The increasing use of journals leads in this direction, though attention must be paid to the quality and extent of the thinking.<sup>134</sup> If the specific purpose of the activity is lacking, critical thinking will be absent. Hence while reflective journals are tools that can be used for reflective writing, direction on what form the writing should take requires transparency.<sup>135</sup>

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<sup>124</sup> Moon (2006), above n 9; Moon (2007), above n 9.

<sup>125</sup> Above n 124.

<sup>126</sup> Ibid.

<sup>127</sup> Moon (2007), above n 9, 129.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid 30.

<sup>131</sup> Ibid 146.

<sup>132</sup> Ibid 129.

<sup>133</sup> Ibid 132.

<sup>134</sup> Ibid 133.

<sup>135</sup> McNamara, Cockburn and Campbell, above n 31.

### *E Bloom's Taxonomy of Cognitive Thinking: Analysis and Evaluation*<sup>136</sup>

A number of researchers categorise Bloom's model of cognitive thinking as a reflective taxonomy.<sup>137</sup> Bloom's taxonomy regards analysis as important and evaluation as the highest educational objective.<sup>138</sup> In order to evaluate, an individual needs to reflect on and think about what is important and relevant given the context.<sup>139</sup> Evaluation is an important component to include in a reflective model for foundation law students as it is highly regarded as an essential academic skill.<sup>140</sup> Foundation students need to be taught explicitly how to analyse and evaluate because studies show that some students find both tasks difficult.<sup>141</sup> Limitations of Bloom's taxonomy include the need to take into account changing social and cultural contexts, including the need for higher education to adapt to cultural differences<sup>142</sup> and be contextually appropriate.<sup>143</sup>

### *F Operational Aspects of Reflection*

Hatton and Smith categorise reflective writing into four operational types.<sup>144</sup> The first type is descriptive writing, descriptive reports of events or literature, which is categorised as non-reflective, descriptive reflection.<sup>145</sup> The second provides reasons based on personal judgment or students' reading of literature.<sup>146</sup> The third type involves dialogic reflection, in which there is discourse with oneself<sup>147</sup> and the fourth involves critical reflection with the provision of reasons for decisions based on the broader historical, social and/or political contexts.<sup>148</sup> The model of Hatton and Smith can be used in guiding students about differences between descriptive writing and the development of critical thinking.<sup>149</sup> The model also provides support for structured journaling through using reflection-on-action.<sup>150</sup> Additionally, an understanding of the broader historical, social and political contexts as part of critical

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<sup>136</sup> Lorin Anderson and Lauren Sosniak (eds) *Bloom's Taxonomy-A Forty-Year Retrospective* (The National Society for the Study of Education, 1994) 15.

<sup>137</sup> Janet Dymont and Timothy O'Connell, 'The Quality of Reflection in Student Journals: A Review of Limiting and Enabling Factors' (2010) 35 *Innovations in Higher Education* 237; Janet Dymont and Timothy O'Connell, 'Journal of Post Secondary Outdoor Recreation Students: The Results of a Content Analysis (2004) 4 *Journal of Adventure Education and Outdoor Learning* 161; Bulman and Schutz, above n 29, 25.

<sup>138</sup> Joanne Roebuck, 'Reflexive Practice: To Enhance Student Learning' (2007) 2 *Journal of Learning Design* 86.

<sup>139</sup> Hinett and Varnava, above n 8.

<sup>140</sup> Cottrell, above n 20; Bloom, above n 10; Bulman and Schutz, above n 27; Roebuck, above n 138; James and Field, above n 25, 291, 293-294.

<sup>141</sup> Anderson and Sosniak, above n 136, 160; Ainslie Lamb, John Littrich and Katrina Murray, *Lawyers in Australia* (Federation Press, 2015) 217; James and Field, above n 25, 291-294.

<sup>142</sup> Anderson and Sosniak, above n 136; Dymont and O'Connell (2004), above n 137; Dymont and O'Connell (2010), above n 137.

<sup>143</sup> Dymont and O'Connell (2004), above n 137; Dymont and O'Connell (2010), above n 137.

<sup>144</sup> Hatton and Smith, above n 1.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

reflection is essential for students, particularly foundation students, to enable them to develop greater understandings of legal systems.

### *G Flexible and Contextual Taxonomies for Reflection in Legal Education*

Boud, Keogh and Walker define reflection as ‘those intellectual and affective activities in which individuals engage to explore their experiences in order to lead to new understandings and appreciations’.<sup>151</sup> Focus is on teacher-assisted learning.<sup>152</sup> The reflective activities are in three stages: preparation, engagement and processing.<sup>153</sup> Structured reflection is the key to learning from experience.<sup>154</sup> Experience alone is not sufficient for learning. Boud, Keogh and Walker pose the following questions:

- 1) What is it that turns experience into learning?
- 2) What specifically enables learners to gain the maximum benefit from the situations they find themselves in?
- 3) How can they apply their experience in new contexts?<sup>155</sup>

They support the use of journals for developing reflection.<sup>156</sup> Boud and Walker’s more recent work recognises the uniqueness of the learning event and the context of learning with a focus on the ability of the teacher to construct the appropriate learning environment.<sup>157</sup> According to this view, there is no best time for reflection.<sup>158</sup> Implementation may therefore be challenging and time consuming.<sup>159</sup> Boud and Walker express concern about ‘recipe following.’<sup>160</sup> They consider this to be a mechanical approach to reflection that ignores learners’ uniqueness, their prior experience, the context in which they are operating and the power dynamics which may intrude.<sup>161</sup> Another concern of Boud and Walker is that reflection can occur without learning.<sup>162</sup> They suggest that failure to design activities without recognising the context is a problem.<sup>163</sup> They argue that reflection needs to be flexibly deployed, that it is highly context specific and that the social and cultural context have a powerful influence on reflection.<sup>164</sup>

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<sup>151</sup> Boud, Keogh and Walker, above 12.

<sup>152</sup> Ibid 8.

<sup>153</sup> Ibid 7.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid 52.

<sup>157</sup> David Boud and David Walker, ‘Promoting Reflection in Professional Courses: the Challenge of Context’ (1998) 23 *Studies in Higher Education* 204.

<sup>158</sup> Hinett and Varnava, above n 8, 44.

<sup>159</sup> Karran Thorpe, ‘Reflective Learning Journals: From Concept to Practice’ (2004) 5 *Reflective Practice* 327.

<sup>160</sup> Boud and Walker, above n 157, 204.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> Anne Macduff, ‘Deep Learning, Critical Thinking and Teaching for Law Reform’ (2005) 39 *Law Teacher* 243.

Prompt-based taxonomies use questions to elicit answers potentially resulting in transformative views on how to do things differently.<sup>165</sup> Some models are a combination of prompts and answers based on stages.<sup>166</sup> For example, Cottrell has devised a core model for critical reflection, which combines stages with question based prompts.<sup>167</sup> Tables 2 and 3 provide examples of prompt-based and multi-staged models. Examination of the prompt-based models reveals the influences of previously developed models.<sup>168</sup>

**TABLE 2: Examples of Prompt-Based Models of Reflection from Different Disciplines**

Academic(s)	Format of Prompts	Discipline
Borton 1970 <sup>169</sup>	1. What? 2. So what? 3. Now what?	Education
Driscoll 1994 <sup>170</sup>	1. What? 2. So what? 3. Now what?	Nursing
Johns and Freshwater 1998 <sup>171</sup>	Empirical, personal, aesthetic, ethical and reflexive	Nursing
Rolfe, Freshwater and Jasper 2001 <sup>172</sup>	1. What? 2. So what? 3. Now what?	Nursing/Helping Professions
Cottrell 2010 <sup>173</sup>	1. Is it worth thinking about? 2. What happened? 3. Why? 4. What can be learnt? 5. Use it	University Education

**TABLE 3: Multi-Stage and or Core-Based Models in Different Disciplines**

Researcher(s)	Stages	Discipline
Gibbs 1988 <sup>174</sup>	Description Feelings Evaluation Analysis Conclusion Action Plan	Education
Scanlan and Cheromas 1997 <sup>175</sup>	Awareness Critical Analysis New Perspective(s)	Nursing Education
Cottrell 2010 <sup>176</sup>	Evaluate Reconstruct Analyse Distil Apply	Teacher Education

<sup>165</sup> Cottrell, above n 20, 221.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid 223.

<sup>168</sup> See Table 3.

<sup>169</sup> Borton, above n 90.

<sup>170</sup> Driscoll, above n 90.

<sup>171</sup> Johns and Freshwater, above n 90.

<sup>172</sup> Rolfe, Freshwater and Jasper, above n 90.

<sup>173</sup> Cottrell, above n 20.

<sup>174</sup> Gibbs, above n 13.

<sup>175</sup> Judith Scanlon and Wanda Chernomas, 'Developing the Reflective Teacher' (1997) 25 *Journal of Advanced Nursing* 1138.

<sup>176</sup> Cottrell, above n 20, 223.

Researcher(s)	Stages	Discipline
Waye and Faulkner 2011 <sup>177</sup>	Description Feelings Sharing Positions Analysis and Identification of Alternate Perspectives Critical Thinking Action Plan	Law
Ryan and Ryan 2012 <sup>178</sup>	Reporting and Responding Relating and Making Connections Reasoning Reconstructing	Law

A number of other reflective taxonomies have surfaced over the last few decades.<sup>179</sup> Driscoll and Johns have refined and developed their models over time, indicating the likelihood that their own reflections about their work have led to transformation and change.<sup>180</sup> Gibbs' reflective cycle includes 'a separate stage on feelings'.<sup>181</sup> This model involves a cycle of a description of what happened, what one was thinking and feeling, evaluating what was good or bad about the experience, analysis of what sense can be made of the situation, culminating with what else could have been done.<sup>182</sup> It concludes with an action plan of what if this situation arose again what would one do.<sup>183</sup> Analysis of the multi-staged models reveals some overarching similarities including the use of evaluation and analysis in reflective models.<sup>184</sup>

Waye and Faulkner adapt Gibbs' model into a context for law students.<sup>185</sup> Their model is cyclical and prompt-based, although they note that reflection need not follow any particular order.<sup>186</sup> The model incorporates the common elements of experience, feelings, analysis and action planning, together with sharing views with others, critical thinking and contextualising.<sup>187</sup> They argue that sharing views with others within a supportive environment can increase awareness of multiple perspectives and encourage the development of self-awareness.<sup>188</sup>

James and Field suggest that reflective practice can be undertaken following the approach of Ryan and Ryan by reporting and responding, relating and making connections, reasoning and reconstructing.<sup>189</sup> This model exhibits similarities to Waye and Faulkner's model.<sup>190</sup> Via

<sup>177</sup> Waye and Faulkner in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 250, [9.3].

<sup>178</sup> Ibid.

<sup>179</sup> See, eg, Bulman and Schutz, above n 27.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid 221.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Gibbs, above n 13; Waye and Faulkner, above n 177; Cottrell, above n 20.

<sup>185</sup> Kift et al, above n 14, 250, 251, 252.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid 253.

<sup>189</sup> James and Field, above n 25, 354.

<sup>190</sup> Waye and Faulkner, above n 177.



reporting and responding, experiences are examined through relating ideas and making connections. Analysis is also important. Through reasoning, critical thinking is developed and reconstruction can be part of transformation and action planning. The model of Johns and Freshwater includes a component of personal knowledge, which incorporates knowing how feelings and motivations influence actions.<sup>191</sup> Importantly, it also recognises the need for inclusion of an ethical component of knowledge and reflection on knowing what is right to do.<sup>192</sup> By contrast, Driscoll's model provides three effective prompt-based questions to elicit reflective responses.<sup>193</sup>

### *I The Importance of Critical Reflection and Transformation*

Biggs and Tang promote reflection as the highest level of deep learning, arguing that deep learning teaching approaches are more beneficial than surface learning approaches, given that they are indicative of good teaching practices.<sup>194</sup> They argue that 'expert teachers continually reflect on how they might teach even better'<sup>195</sup> and emphasise the importance of transformative reflection for transformation with learning.<sup>196</sup> This process involves both immersions in the academic literature and action research for improvement.<sup>197</sup> According to Brookfield educators must engage in the critically reflective process through four lenses: autobiographical reflection, students' eyes,<sup>198</sup> colleagues' perceptions or experiences<sup>199</sup> and reading and understanding bodies of literature on critical reflection.<sup>200</sup> He recognises 'students perceptions are especially helpful to us when it comes to surfacing issues of power'<sup>201</sup> in relation to learning. One way this can be done is through guided learning journals to improve teaching and learning.<sup>202</sup>

## IV CONCLUSION

This chapter argues that despite a lack of academic consensus on the most appropriate reflective taxonomy, critical reflection is an essential skill for university graduates. Both critical reflection and critical thinking skills are interrelated because components of each can be similar.<sup>203</sup> They are included within three of the six TLOs for the undergraduate law

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<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Rolfe, Freshwater and Jasper also adopted this model in 2001; Chapter 4, Table 2.

<sup>194</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University—What the Student Does* (McGraw Hill, 4<sup>th</sup> ed, 2011).

<sup>195</sup> Ibid 28-29.

<sup>196</sup> Ibid 45.

<sup>197</sup> Ibid 51.

<sup>198</sup> Brookfield, above 30, Preface.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid 94.

<sup>202</sup> Ibid 97.

<sup>203</sup> See, eg, James and Field, above n 25, 291, 354-358.

degree.<sup>204</sup> The work of Dewey emphasises the importance of the student's own experiences as essential for reflective learning.<sup>205</sup> Experiential learning is recognised as important to legal education. Schon's reflection-in-action and reflection-on-action approach assists in developing reflective practitioners.<sup>206</sup> Hinett, Varnara and Moon argue that learning showing a transformation of perspectives is evidence of higher levels of reflection.<sup>207</sup> Similarly, Bloom's taxonomy includes analysis and evaluation as higher order thinking skills.<sup>208</sup> Hatton and Smith's model indicates the importance of explicit teaching of types of reflection together with the broader contextualisation of reflections.<sup>209</sup> These aspects are also captured in the work of Boud, Keogh and Walker, whose structured model can be a more flexible one.<sup>210</sup>

The prompt-based and staged models provide guidance and structure towards the development of reflection in the form of questions or stages. The emphasis on analysis, evaluation and transformation as components of reflection are emphasised in the prompt-based model by Waye and Faulkner,<sup>211</sup> Gibbs<sup>212</sup> and Ryan and Ryan.<sup>213</sup> This literature review demonstrates the importance of the development of critical reflection of law students' ability to critically reflect.<sup>214</sup> It shows that there are numerous ways that components of critical reflection can be taught, which inform the research and the findings of the thesis revealed in Chapter 9. A model of critical reflection for foundation law students to use as a guide to critical reflection has been developed from the research conducted with the reflective journals, informed by the literature in this chapter.<sup>215</sup>

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<sup>204</sup> See Chapter 4 II A.

<sup>205</sup> Dewey, above n 5.

<sup>206</sup> Schon, above n 7.

<sup>207</sup> Hinett and Varnara, above n 8; Moon (2007), above n 9.

<sup>208</sup> Bloom, above n 10.

<sup>209</sup> Hatton and Smith, above n 1.

<sup>210</sup> Boud, Keogh and Walker, above n 112.

<sup>211</sup> Waye and Faulkner, above n 177.

<sup>212</sup> Gibbs, above n 13.

<sup>213</sup> Ryan and Ryan, above n 4.

<sup>214</sup> Dewey, above n 5; Schon, above n 7; Hinett and Varnara, above n 8; Moon (2007), above n 9; Biggs and Tang, above n 194, Brookfield, above n 30.

<sup>215</sup> Chapter 9, Figure 1.

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# CHAPTER 5: ANALYSIS OF REFLECTIVE JOURNALING IN TERTIARY EDUCATION: LESSONS FOR LEGAL EDUCATION

## I INTRODUCTION

This thesis argues that students from the foundation law years onwards should be taught ethics and professionalism in a variety of less traditional, innovative ways, which include reflective journaling. Reflective journals have been ‘the most favoured reflective practice tools in universities’.<sup>1</sup> They are often used to help students prepare for career roles and allow students to measure, monitor and challenge their own learning.<sup>2</sup> This chapter examines the use of reflective journaling in tertiary education and its applicability in legal education. A systematic analysis of the use of reflective journaling studies is undertaken, which outlines the databases used and examines the:

- 1) Discipline of the studies
- 2) Country of origin of the studies
- 3) Longitudinal nature of the studies
- 4) Scale of the studies
- 5) Students involved in the studies
- 6) Research/ data collection method(s) of the studies
- 7) Reflective taxonomies for evaluating the reflective journals in the studies
- 8) Pedagogical strategies of the studies
- 9) Frequency of journaling and other pedagogical techniques used in the studies
- 10) Aims and topics of the studies

This thesis argues that students should be provided with more instruction about reflective journaling, more detailed feedback, practice with critically reflective writing and a supportive, encouraging learning environment.<sup>3</sup> The chapter also provides a summary from academic literature of the benefits reflective journaling studies have for enhancing critically reflective practice in legal education.

## II MULTI-DISCIPLINARY ANALYSIS OF REFLECTIVE JOURNALING STUDIES

Journaling studies were selected from a variety of academic journal databases across all disciplines. Databases included *ProQuest*, *InformaWorld*, *Australian and New Zealand Reference Centre*, *Springer Link*, *Austlii*, *Directory of Open Access Journals*, *Edith Cowan*

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<sup>1</sup> Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws) Reflective Practice* (Australian Learning and Teaching Council, 2013) <<http://www.lawteachnetwork.org/resources/gpg--reflection.pdf>>8.

<sup>2</sup> Ibid.

<sup>3</sup> Judith McNamara, Rachael Field and Natalie Cuffe, ‘Designing Reflective Assessment for Effective Learning of Legal Research Skills in First Year’ (Paper presented at Proceedings First Year in Higher Education Conference, Hobart, 30<sup>th</sup> June-2<sup>nd</sup> July 2008) <<http://eprints.qut.edu>> 3, 7.

University, CINAHL, ERIC, Google and Google Scholar.<sup>4</sup> Searches were completed using the search terms: journals, reflective journals, reflection, journaling and legal education. The journaling studies are analysed using the ten-factor inquiry of analysis noted in the introduction of this Chapter.

### *A Discipline of the Studies*

While research in this chapter derives from different disciplines,<sup>5</sup> journaling research from different disciplines is relevant to Australian legal education especially from those disciplines that combine with law to form combined degrees.<sup>6</sup> As law is a discipline that tends to have a limited doctrinal pedagogical approach,<sup>7</sup> legal academics can derive valuable insights from the experiences of other disciplines where pedagogical approaches are more varied.<sup>8</sup> For example, journaling is more prevalent in disciplines where practicums or field trips are common.<sup>9</sup>

Table 1 reveals that the majority of the relevant studies are from education and nursing. For law students, court experiences are similar to observations, which can be made during practicums in other disciplines. Law students can accordingly use court trips and observations about court as valuable journaling experiences for critical reflection about the roles and etiquette of lawyers, judges and the defendants together with subjects such as access to justice.<sup>10</sup>

<sup>4</sup> <<http://search.proquest.com.ezproxy.utas.edu.au>>; <<http://www.tandfonline.com>>; <<http://www.ebscohost.com>>; <<http://link.springer.com/http://www.austlii.edu.au>>; <<http://www.austlii.edu.au>>; <<http://www.doaj.org>>; <<http://www.cinahl.com>>; <<http://eric.ed.gov>>; <<http://www.google.com.au>>; <<http://scholar.google.com.au>>.

<sup>5</sup> Table 1.

<sup>6</sup> See, eg, UTAS offers combined law degrees, which includes business, arts and science <[www.utas.edu.au/law](http://www.utas.edu.au/law)>.

<sup>7</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 23-24.

<sup>8</sup> Table 1 shows different disciplines including education and health sciences where practicums are integral to education.

<sup>9</sup> Janet Dymont and Timothy O'Connell, 'Effects of a Workshop on Perceptions of Journaling in Outdoor Education Field Courses: An Exploratory Study' (2003) 26 *The Journal of Experiential Education* 75; Janet Dymont and Timothy O'Connell, 'Journal Writing on Wilderness Expeditions as a Tool for Sustainable Education- Reflections on the Potential and the Reality' (2007) 6 *Applied Education & Communication* 139; Janet Dymont and Timothy O'Connell, "'Journal Writing is Something We Have to Learn on Our Own"- The Results of a Focus Group Discussion with Recreation Students' (2003) 18 *Schole: A Journal of Leisure Studies and Recreational Education* 23; Janet Dymont and Timothy O'Connell, 'Journals of Post Secondary Outdoor Recreation Students: The Results Of A Content Analysis' (2004) 4 *Journal of Adventure Education & Outdoor Learning* 159; Janet Dymont and Timothy O'Connell, 'The Quality and Reflection in Student Journal: A Review of Limiting and Enabling Factors' (2010) 35 *Innovative Higher Education* 233.

<sup>10</sup> Michael King et al, *Non-Adversarial Justice* (Federation Press, 2<sup>nd</sup> ed, 2014) 282; James and Field, above n 8, 31, 354-358; Claire Macken, 'Law School Engagement: The Curricula and Co-Curricular Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 312, 328, [12.30].



**TABLE 1: The Number of Studies Per Discipline**

No. of Studies	Discipline
1	Accounting, <sup>11</sup> Information Systems/Computing, <sup>12</sup> Mathematics, <sup>13</sup> Geography, <sup>14</sup> Medicine, <sup>15</sup> Social Work, <sup>16</sup> Engineering, <sup>17</sup> Tourism <sup>18</sup> & Interior Design <sup>19</sup>
2	Occupational Therapy, Physiotherapy and Radiology, <sup>20</sup> Counselling/Therapy, <sup>21</sup> Law <sup>22</sup> & Management <sup>23</sup>
3	Physical Therapy <sup>24</sup>
4	Nursing <sup>25</sup>
12	Education <sup>26</sup> including outdoor education <sup>27</sup>

<sup>11</sup> Jane Bisman, 'Engaged Pedagogy: A Study of the Use of Reflective Journals in Accounting Education' (2010) *Assessment and Evaluation in Higher Education* 1.

<sup>12</sup> Terry King, 'Development of Student Skills in Reflective Writing-Improving the Quality of Reflective Writing' <[http://www.osds.uwa.edu.au/data/page/37666/Terry King doc](http://www.osds.uwa.edu.au/data/page/37666/Terry%20King%20doc)>.

<sup>13</sup> Ian Beveridge, 'Teaching your Students to Think Reflectively: The Case for Reflective Journals' (1997) 2 *Teaching in Higher Education* 33.

<sup>14</sup> Martin Haigh, 'Constructing Gaia: Using Journals to Foster Reflective Learning' (2001) 25 *Journal of Geography in Higher Education* 167.

<sup>15</sup> David Snadden et al, 'Portfolio-based Learning and General Practice Vocation Training' (1996) 30 *Medical Education* 148.

<sup>16</sup> Marion Swindell and Joshua Watson, 'Teaching Ethics Through Self-Reflective Journaling' (2006) 3 *Journal of Social Work Values and Ethics* 5.

<sup>17</sup> Stuart Palmer, Dale Holt and Sharyn Bray, 'The Learning Outcomes of an On-line Reflective Journal in Engineering' (Paper presented at Ascilite, Deakin University, Melbourne, 2 December 2008) <[www.ascilite.org.au/conferences/melbourne08/procs/palmer.pdf](http://www.ascilite.org.au/conferences/melbourne08/procs/palmer.pdf)>.

<sup>18</sup> Anne Zahra, 'Empirical Evidence of Learning Journals as a Form of Assessment' (Paper presented at the Council for Australian University Tourism and Hospitality Education Conference, Gold Coast International Hotel, Surfers Paradise, 11-14 February 2008) <<http://www.griffith.edu.au/conference/cauthe2008/>>.

<sup>19</sup> Gowri Betrabet Gulwadi, 'Using Reflective Journals In A Sustainable Design Studio' (2009) 10 *International Journal of Sustainability in Higher Education* 96.

<sup>20</sup> David Kember et al, 'Determining the Level of Reflective Thinking from Students' Written Journals using a Coding Scheme Based on the Work of Mezirow' (1999) 18 *International Journal of Lifelong Education* 18; Naomi Findlay, Shane Dempsey and Helen Whalen Ford, 'Validation and Use of the Newcastle Reflective Analysis Tool: A Three-Year Longitudinal Study of RT Students' Reflective Journals' (2010) 11 *Reflective Practice* 83.

<sup>21</sup> Liz Sutton, Michael Townend and Jeannie Wright, 'The Experiences of Reflective Learning Journals by Cognitive Behavioural Psychotherapy Student' (2007) 8 *Reflective Practice* 387; Jeannie Wright, 'A Discussion with Myself on Paper: Counselling and Psychotherapy Masters Students' Perceptions of Keeping a Learning Log' (2005) 6 *Reflective Practice* 507.

<sup>22</sup> Terry Hutchinson and Natalie Cuffe, 'Legal Research Project Management: Skills Extension for Upper Level Law Students' (2004) 38 *Law Teacher* 159; Harriet Katz, 'Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools' (2008) 59 *Mercer Law Review* 909.

<sup>23</sup> Kathryn Pavlovich, 'The Development of Reflective Practice through Student Journals' (2007) 26 *Higher Education Research & Development* 281; Robert Loo and Karran Thorpe, 'Using Reflective Learning Journals to Improve Individual and Team Performance' (2002) 8 *Team Performance Management: An International Journal* 134.

<sup>24</sup> Susan Murray, 'The Benefits of Journaling: "Stories are Medicine" "Art is Medicine"' (1997) 32 *Parks & Recreation* 68; Margaret Plack et al, 'A Method for Assessing Reflective Journal Writing' (2005) 34 *Journal of Allied Health* 199; R Williams et al, 'Journal Writing To Promote Reflection By Physical Therapy Students During Clinical Placements' (2002) 18 *Physiotherapy Theory and Practice* 5.

<sup>25</sup> Karran Thorpe, 'Reflective Learning Journals: From Concept to Practice' (2004) 5 *Reflective Practice* 327; Monica Kennison and Shirley Misselwitz, 'Evaluating Reflective Writing for Appropriateness, Fairness and Consistency' (2002) 23 *Nursing Education Perspectives* 238; Frances Wong et al, 'An Action Research Study Into the Development of Nurses as Reflective Practitioners' (1997) 36 *Journal of Nursing Education* 476; Sharon Jenson and Christina Joy, 'Exploring a Model to Evaluate Levels of Reflection in Baccalaureate Nursing Students' Journals' (2005) 44 *Journal of Nursing Education* 139.

<sup>26</sup> Frederick King and Diana LaRocco, 'E-journaling: A Strategy to Support Student Reflection and Understanding' (2006) 9 *Current Issues in Education* <<http://cle.asu.edu/volume9/number4/>>; Anne Hume, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 *Higher Education Research & Development* 247; Magdeleine Lew and Henk Schmidt, 'Online Reflection Journals: Learning Through Assessment' (Paper presented at Ascilite Conference, Nanyang Technological University, Singapore, 2-5 December 2007) <[www.ascilite.org.au/conferences/singapore07/procs/lew.pdf](http://www.ascilite.org.au/conferences/singapore07/procs/lew.pdf)>; Ombonya Otienoh, 'Reflective Practice: The Challenge of Journal Writing' (2009) 10 *Reflective Practice* 477; Mark Minott, 'Valli's 'Typology of Reflection and the Analysis of Pre-Service Teachers Reflective Journals'(2008) 33 *Australian Journal of Teacher Education* 55; Jennifer Sumsion and Alma Fleet, 'Reflection. Can we assess it? Should we assess it?' (1996) 21 *Assessment and Evaluation in Higher Education* 121; William Baker, 'The Use of Journaling in the Development of Student Engagement and Confidence with the Teaching of Music in an Australian Early Childhood and Primary Teacher Education Degree: A New Perspective of an Old Problem' (2007) 1 *Australian Journal of Music Education* 40.

<sup>27</sup> Dymont and O'Connell, above n 10.

## B Country of Origin of the Studies

The majority of studies<sup>28</sup> stem from Western countries with common law legal systems and advanced higher education systems.<sup>29</sup> These studies share a similar setting to that experienced by university students in Australia, such as those at UTAS.

**TABLE 2: Country of Origin of the Studies**

<b>Studies</b>	<b>Country/Countries of Origin</b>
Sumsion & Fleet, <sup>30</sup> Hutchison & Cuffe, <sup>31</sup> Baker, <sup>32</sup> Palmer, Holt & Bray, <sup>33</sup> Bisman <sup>34</sup> & Findlay, Dempsey & Whalen Ford <sup>35</sup>	Australia
Dyment & O'Connell <sup>36</sup>	Canada & United States of America
Snadden et al, <sup>37</sup> Beveridge, <sup>38</sup> King, <sup>39</sup> Haigh <sup>40</sup> & Wright <sup>41</sup>	United Kingdom & Scotland
Katz, <sup>42</sup> Murray, <sup>43</sup> Kennison & Misselwitz, <sup>44</sup> Jensen & Joy, <sup>45</sup> Plack et al, <sup>46</sup> King & LaRocco, <sup>47</sup> Swindell & Watson <sup>48</sup> & Gulwadi <sup>49</sup>	United States of America
Loo & Thorpe, <sup>50</sup> Williams et al <sup>51</sup> & Thorpe <sup>52</sup>	Canada
Pavlovich, <sup>53</sup> Sutton, Townend & Wright, <sup>54</sup> Zahra, <sup>55</sup> & Hume <sup>56</sup>	New Zealand
Lew & Schmidt <sup>57</sup>	Singapore
Minott <sup>58</sup>	Cayman Islands
Otienoh <sup>59</sup>	East Africa
Wong et al <sup>60</sup> & Kember et al <sup>61</sup>	Hong Kong

<sup>28</sup> Table 2.

<sup>29</sup> Ibid.

<sup>30</sup> Sumsion and Fleet, above n 27.

<sup>31</sup> Hutchinson and Cuffe, above n 23.

<sup>32</sup> Baker, above n 27.

<sup>33</sup> Palmer, Holt and Bray, above n 18.

<sup>34</sup> Bisman, above n 12.

<sup>35</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>36</sup> Dyment and O'Connell, above n 10.

<sup>37</sup> Snadden et al, above 16.

<sup>38</sup> Beveridge, above n 14.

<sup>39</sup> King, above n 13.

<sup>40</sup> Haigh, above n 15.

<sup>41</sup> Wright, above n 22.

<sup>42</sup> Katz, above n 23.

<sup>43</sup> Murray, above n 25.

<sup>44</sup> Kennison and Misselwitz, above n 26.

<sup>45</sup> Jensen and Joy, above n 26.

<sup>46</sup> Plack et al, above n 25.

<sup>47</sup> King and LaRocco, above n 27.

<sup>48</sup> Swindell and Watson, above n 17.

<sup>49</sup> Gulwadi, above n 20.

<sup>50</sup> Loo and Thorpe, above n 24.

<sup>51</sup> Williams et al, above n 25.

<sup>52</sup> Thorpe, above n 26.

<sup>53</sup> Pavlovich, above n 24.

<sup>54</sup> Sutton, Townend and Wright, above n 22.

<sup>55</sup> Zahra, above n 19.

<sup>56</sup> Hume, above n 27.

<sup>57</sup> Lew and Schmidt, above n 27.

<sup>58</sup> Minott, above n 27.

<sup>59</sup> Otienoh, above n 27.

### *C Longitudinal Nature of the Studies*

One fifth of the studies do not specify a time span.<sup>62</sup> Table 3 provides an estimation of the length of the studies. The assumption from reviewing the academic literature is that the studies cover the length of a single course of one semester or a university year.<sup>63</sup> There is only one study where the duration of the study is unknown from the literature review.<sup>64</sup> Table 4 represents the breakdown of studies where the duration of the research can be determined. Approximately one quarter of the studies were three to five years in length, the remainder being for shorter periods. Only one of the studies viewed the shorter duration as a limitation of the research.<sup>65</sup>

**TABLE 3: Estimated Duration of Studies**

Study	Estimated Duration
Kember et al <sup>66</sup>	One Course or Semester
Haigh <sup>67</sup>	One Course
Kennison & Misselwitz <sup>68</sup>	Not Known
Thorpe <sup>69</sup>	One Course or Semester
Wright <sup>70</sup>	One Course or Semester
King & LaRocco <sup>71</sup>	Two Courses
Pavlovich <sup>72</sup>	One Year

**TABLE 4: Lengths of Studies**

Study	Longitudinal	Length
Bisman <sup>73</sup>	Yes	5 Years
Dyment & O'Connell, <sup>74</sup> Beveridge, <sup>75</sup> Zahra, <sup>76</sup> Hume <sup>77</sup> & Findlay, Dempsey & Whalen Ford <sup>78</sup>	Yes	3-4 Years
King, <sup>79</sup> Murray <sup>80</sup> & Katz <sup>81</sup>	No	1-2 Years
Sutton, Townend & Wright <sup>82</sup> & Hutchinson & Cuffe <sup>83</sup>	No	1 Year
Plack et al <sup>84</sup> & Snadden et al <sup>85</sup>	No	3 Semesters

<sup>60</sup> Wong et al, above n 26.

<sup>61</sup> Kember et al, above n 21.

<sup>62</sup> Seventeen percent.

<sup>63</sup> Seven of the studies.

<sup>64</sup> Kennison and Misselwitz, above n 26.

<sup>65</sup> King and LaRocco, above n 27.

<sup>66</sup> Kember et al, above n 21.

<sup>67</sup> Haigh, above n 15.

<sup>68</sup> Kennison and Misselwitz, above n 26.

<sup>69</sup> Thorpe, above n 26.

<sup>70</sup> Wright, above n 22.

<sup>71</sup> King and LaRocco, above n 27.

<sup>72</sup> Pavlovich, above n 24.

<sup>73</sup> Bisman, above n 12.

<sup>74</sup> Dyment and O'Connell, above n 10.

<sup>75</sup> Beveridge, above n 14.

<sup>76</sup> Zahra, above n 19.

<sup>77</sup> Hume, above n 27.

<sup>78</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>79</sup> King, above n 13.

<sup>80</sup> Murray, above n 25.

<sup>81</sup> Katz, above n 23.

<sup>82</sup> Sutton, Townend and Wright, above n 22.

<sup>83</sup> Hutchinson and Cuffe, above n 23.

<sup>84</sup> Plack et al, above n 25.

Study	Longitudinal	Length
Palmer, Holt & Bray, <sup>86</sup> Wong et al <sup>87</sup> & Otienoh <sup>88</sup>	No	2 Semesters
Sumsion & Fleet <sup>89</sup>	No	18-22 Weeks
Swindell & Watson, <sup>90</sup> Jenson & Joy <sup>91</sup> & Minott <sup>92</sup>	No	12 Weeks
Loo & Thorpe, <sup>93</sup> Baker <sup>94</sup> Gulwadi <sup>95</sup> & Williams et al <sup>96</sup>	No	6-10 Weeks

### D Scale of the Studies

Journaling studies are small-scale in terms of participant numbers,<sup>97</sup> with only one study having above 200 participants.<sup>98</sup> The majority of the studies contain participant numbers of less than 100, with only three studies not listing participant numbers.<sup>99</sup> Smaller scale studies are considered more appropriate for qualitative research and so it is not surprising that only three studies recognise smallness of scale as a limitation.<sup>100</sup>

**TABLE 5: Highest Numbers of Participants**

Study	Numbers
Lew & Schmidt <sup>101</sup>	327
King <sup>102</sup>	90
Baker <sup>103</sup>	86
Zahra <sup>104</sup>	85
Wong et al & Sumsion & Fleet <sup>105</sup>	73
Katz <sup>106</sup>	70
Dyment & O'Connell <sup>107</sup>	62
Williams et al <sup>108</sup>	56
Thorpe <sup>109</sup>	52
Palmer, Holt & Bray <sup>110</sup> Loo & Thorpe, <sup>111</sup> Pavlovich <sup>112</sup> Haigh, <sup>113</sup> Bisman, <sup>114</sup> Snadden et al <sup>115</sup> & Gulwadi <sup>116</sup>	Between 30-49

<sup>85</sup> Snadden et al, above n 16.

<sup>86</sup> Palmer, Holt and Bray, above n 18.

<sup>87</sup> Wong et al, above n 26.

<sup>88</sup> Otienoch, above n 27.

<sup>89</sup> Sumsion and Fleet, above n 27.

<sup>90</sup> Swindell and Watson, above n 17.

<sup>91</sup> Jenson and Joy, above n 26.

<sup>92</sup> Minott, above n 27.

<sup>93</sup> Loo and Thorpe, above n 24.

<sup>94</sup> Baker, above n 27.

<sup>95</sup> Gulwadi, above n 20.

<sup>96</sup> Williams et al, above n 25.

<sup>97</sup> Table 5.

<sup>98</sup> In Table 5 93% of the studies reveal participant numbers.

<sup>99</sup> Findlay, Dempsey and Whalen Ford, above n 21; Kember et al, above n 21, Beveridge, above n 14.

<sup>100</sup> Dyment and O'Connell, above n 10; Wright, above n 22; King and LaRocco, above n 27.

<sup>101</sup> Lew and Schmidt, above n 27.

<sup>102</sup> King, above n 13.

<sup>103</sup> Baker, above n 27.

<sup>104</sup> Zahra, above n 19.

<sup>105</sup> Wong et al, above n 26; Sumsion and Fleet, above n 27.

<sup>106</sup> Katz, above n 23.

<sup>107</sup> Dyment and O'Connell, above n 10.

<sup>108</sup> Williams at al, above n 25.

<sup>109</sup> Thorpe, above n 26.

<sup>110</sup> Palmer, Holt and Bray, above n 18.

<sup>111</sup> Loo and Thorpe, above n 24.

<sup>112</sup> Pavlovich, above n 24.

<sup>113</sup> Haigh, above n 15.

<sup>114</sup> Bisman, above n 12.

<sup>115</sup> Snadden et al, above n 16.

Study	Numbers
Plack et al <sup>117</sup>	27
Swindell & Watson <sup>118</sup> & Hutchinson & Cuffe <sup>119</sup>	24
Minott <sup>120</sup> & Jensen & Joy <sup>121</sup>	20
Sutton, Townsend & Wright <sup>122</sup>	19
Kennison & Misselwitz <sup>123</sup>	17
Hume <sup>124</sup>	16
King and LaRocco <sup>125</sup>	13
Wright, <sup>126</sup> Murray <sup>127</sup> & Otienoh <sup>128</sup>	Between 3-6

### E Students involved in the Studies

Three-quarters of the studies involve undergraduate students, with the remainder involving postgraduate students.<sup>129</sup> The study by King suggests there are no significant differences between postgraduate students and undergraduate students in terms of the quality of journaling.<sup>130</sup> One of the two law studies in the studies examined also involves undergraduate students.<sup>131</sup>

### F Research/Data Collection Method(s) of the Studies

Table 6 shows various qualitative research methods have been deployed as the primary approach in the studies. The most common data collection methods include analysis of the reflective text, interviews and observations. The studies show significant support for content analysis, with coding for thematic analysis in common use. Some studies test reflective typologies. Others use thematic coding, interpretative phenomenological analysis and/or a constructivist approach. Whilst coding provides flexibility for analysis of narratives, the findings have a high degree of subjective interpretation, giving rise to a multiplicity of interpretations consistent with the post-structural theoretical position of this thesis. The researcher needs to make his or her theoretical position clear to ensure transparency.<sup>132</sup>

<sup>116</sup> Gulwadi, above n 20.

<sup>117</sup> Plack et al, above n 25.

<sup>118</sup> Swindell and Watson, above n 17.

<sup>119</sup> Hutchinson and Cuffe, above n 23.

<sup>120</sup> Minott, above n 27.

<sup>121</sup> Jensen and Joy, above n 26.

<sup>122</sup> Sutton, Townsend and Wright, above n 22

<sup>123</sup> Kennison and Misselwitz, above n 26.

<sup>124</sup> Hume, above n 27.

<sup>125</sup> King and LaRocco, above n 27.

<sup>126</sup> Wright, above n 22.

<sup>127</sup> Murray, above n 25.

<sup>128</sup> Otienoh, above n 27.

<sup>129</sup> Undergraduate studies include Dymont and O'Connell, above n 10; Bisman, above n 12; Beveridge, above n 14; Haigh, above n 15; Swindell and Watson, above n 17; Palmer, Holt and Bray, above n 18; Zahra, above n 19; Gulwadi, above n 20; Findlay, Dempsey and Whalen Ford, above n 21; Kember, above n 21; Katz, above n 23; Pavlovich, above n 24; Plack et al, above n 25; Loo and Thorpe, above n 24; Murray, above 25; Williams, above n 25; Kennison and Misselwitz, above n 26; Jensen and Joy, above n 26; Thorpe, above n 26; Wong et al, above n 26; Baker, above n 27; Hume, above n 27; Lew and Schmidt, above n 27; Otienoh, above n 27; Post Graduate Studies include King, above n 13; Snadden et al, above n 16; Hutchinson and Cuffe, above n 23; Sutton, Townsend and Wright, above 22; King and LaRocco, above n 27; Wright, above n 22; Minott, above n 27; Sumsion and Fleet, above n 27.

<sup>130</sup> King, above n 13.

<sup>131</sup> Katz, above n 23.

<sup>132</sup> See, eg, Kathy Charmaz, *Constructing Grounded Theory* (Sage, 2006).

**TABLE 6: Research/Data Collection Methods and Form of Analysis in Reflective Journaling Studies**

Study	Research/Data Collection Method (s)	Form of Analysis
Snadden et al <sup>133</sup>	Action Research, Semi-Structured Interviews, Critical Incident Technique	Content Analysis Coding Inductive Approach
Sumsion & Fleet <sup>134</sup>	Written Responses to Tutorial Tasks, Student/Teacher Evaluation	Content Analysis Coding
Beveridge <sup>135</sup>	Researcher's Observations	Content Analysis Thematic Analysis
Katz <sup>136</sup>	Case Studies	Content Analysis
Murray <sup>137</sup>	Interviews, Participant Observation	Content Analysis
Wong et al <sup>138</sup>	Action Research Observations Interviews	Content Analysis Typology
Kember et al <sup>139</sup>	Analysis of Journal Text Interview	Content Analysis Coding Using Reflective Typology
King <sup>140</sup>	Workshops	Content Analysis Reflective Typology
Haigh <sup>141</sup>	Consultations Student Evaluations Interviews	Content Analysis Common Epithets & Motifs
Kennison & Misselwitz <sup>142</sup>	Reflective Writing Evaluations	Content Analysis Critical Thinking Typology
Loo & Thorpe <sup>143</sup>	Analysis of Journal Texts	Content Analysis
Williams et al <sup>144</sup>	Analysis of Journal Texts	Content Analysis & Coding
Dyment and O'Connell <sup>145</sup>	Focus Groups Surveys Questionnaires Workshops	Content Analysis Reflective Typology Thematic Analysis
Thorpe <sup>146</sup>	Summative Feedback Reviews	Content Analysis Coding Using Reflective Typology
Jenson & Joy <sup>147</sup>	Analysis of Journal Texts	Content Analysis Typology
Plack et al <sup>148</sup>	Descriptive Analysis of Journal Texts	Content Analysis Typology
Wright <sup>149</sup>	Semi-Structured Interviews Action Research	Content Analysis Interpretive Phenomenological Analysis Coding
Swindell & Watson <sup>150</sup>	Feedback Student Evaluations	Thematic Analysis
Baker <sup>151</sup>	Analysis of Journal Texts	Content Analysis
Lew & Schmidt <sup>152</sup>	Questionnaire & Pilot Model	Content Analysis
Sutton, Townend & Wright <sup>153</sup>	Focus Groups	Interpretive Phenomenological Analysis
Minott <sup>154</sup>	Analysis of Journal Texts	Content Analysis Typology & Coding
Palmer, Holt and Bray <sup>155</sup>	Case Study	Content Analysis & Themes

<sup>133</sup> Snadden et al, above n16.<sup>134</sup> Sumsion and Fleet, above n 27.<sup>135</sup> Beveridge, above n 14.<sup>136</sup> Katz, above n 23.<sup>137</sup> Murray above n 25.<sup>138</sup> Wong et al, above n 26.<sup>139</sup> Kember et al, above 21.<sup>140</sup> King, above n 13.<sup>141</sup> Haigh, above n 15.<sup>142</sup> Kennison and Misselwitz, above n 26.<sup>143</sup> Loo and Thorpe, above n 24.<sup>144</sup> Williams et al, above n 25.<sup>145</sup> Dyment and O'Connell, above n 10.<sup>146</sup> Thorpe, above n 26.<sup>147</sup> Jenson and Joy, above n 2.<sup>148</sup> Plack et al, above n 25.<sup>149</sup> Wright, above n 22.<sup>150</sup> Swindell and Watson, above n 17.<sup>151</sup> Baker, above n 27.<sup>152</sup> Lew and Schmidt, above n 27.<sup>153</sup> Sutton, Townend and Wright, above n 22.<sup>154</sup> Minott, above n 27.

Study	Research/Data Collection Method (s)	Form of Analysis
Zahra <sup>156</sup>	Questionnaires	Content Analysis
Gulwadi <sup>157</sup>	In Class Discussions	Content Analysis Typology & Coding
Hume <sup>158</sup>	Practical Action Interventions Observations in Workshops Interviews Researcher's Planning Notes Examination of Artefacts Content of Reflective Writing	Content Analysis Coding Using Reflective Typology
Otienoch <sup>159</sup>	Interviews	Content Analysis
Bisman <sup>160</sup>	Action Research Interviews	Content Analysis Thematic
Findlay, Dempsey & Whalen Ford <sup>161</sup>	Tool Testing	Content Analysis

### *G Reflective Taxonomies for Evaluating Reflective Journals in the Studies*

Different reflective taxonomies used in the studies show that reflection can be complex and multi-faceted.<sup>162</sup> Researchers have developed reflective taxonomies to measure and test reflective writing. Taxonomies are also used to teach and guide students to reach the highest stages of reflection. Slightly more than one-half of the studies use eleven different taxonomies with varying degrees of suitability.<sup>163</sup> The taxonomies of the studies in Table 7 include Bloom,<sup>164</sup> Moon,<sup>165</sup> Boud, Keogh and Walker,<sup>166</sup> Wong et al,<sup>167</sup> Kember et al,<sup>168</sup> Valli,<sup>169</sup> Mezirow,<sup>170</sup> Hatton and Smith,<sup>171</sup> the Newcastle Reflection Inventory<sup>172</sup> and Schon.<sup>173</sup> Like the Scanlan and Cheromas' model, which contains three stages, reflection, critical analysis and the development of new perspectives, the models are comprised of stages of reflection.<sup>174</sup> Boud, Keogh and Waker's model contains three phases of reflection relating to returning to experiences, connecting with feelings and evaluating experiences.<sup>175</sup> Mezirow's model, which has been changed and adapted over time, has been adopted by Kember et al, who have developed a schema of four categories: non-reflective habitual action, thoughtful action and

<sup>155</sup> Palmer, Holt and Bray, above n 18.

<sup>156</sup> Zahra, above n 19.

<sup>157</sup> Gulwadi, above n 20.

<sup>158</sup> Hume, above n 27.

<sup>159</sup> Otienoh, above n 27.

<sup>160</sup> Bisman, above n 12.

<sup>161</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>162</sup> B Dart et al, 'Change in Knowledge of Learning and Teaching Through Journal Writing (1998) 13 *Research Papers in Education*, 291; Neville Hatton and David Smith, 'Reflection in Teacher Education: Towards Definition and Implementation' (1995) 11 *Teacher and Teacher Education* 33.

<sup>163</sup> See Table 7.

<sup>164</sup> Benjamin Bloom, *Taxonomy of Educational Objectives* (Longmans-Green, 1956).

<sup>165</sup> Jennifer Moon, *Learning Journals: A Handbook for Academics, Students and Professional Development* (RoutledgeFalmer, 1999).

<sup>166</sup> David Boud, Rosemary Keogh and David Walker, *Reflection: Turning Experience into Learning* (Kogan Page, 1985).

<sup>167</sup> Wong et al, above n 26.

<sup>168</sup> Kember et al, above n 21.

<sup>169</sup> Valli in Minott above n 27.

<sup>170</sup> Jack Mezirow et al, *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning* (Jossey-Bass, 1990).

<sup>171</sup> Hatton and Smith, above n 163.

<sup>172</sup> Newcastle Inventory in Findlay, Dempsey and Whalen Ford, above n 21.

<sup>173</sup> Schon in King and LaRocco, above n 27.

<sup>174</sup> Judith Scanlon and Wanda Chernomas, 'Developing the Reflective Teacher' (1997) 25 *Journal of Advanced Nursing* 1138; Wong et al, above n 26.

<sup>175</sup> Boud, Keogh and Walker, above n 167.

introspection, understanding, reflection and critical reflection.<sup>176</sup> Mezirow has also been adapted into the Newcastle Inventory.<sup>177</sup> Moon's model emphasises transformative learning and critical thinking as representing deeper learning.<sup>178</sup> Scanlan and Chernomas propound a three-stage model of reflection, which includes awareness, critical analysis and learning or development of a new perspective based on the critical analysis.<sup>179</sup> Valli and Schon's work relate to reflection-in-action where knowledge is drawn upon to immediately solve problems and reflection-on-action for respective reflection after an experience.<sup>180</sup> Hatton and Smith categorise reflective writing into four types: descriptive writing, descriptive reflection, dialogic reflection and critical reflection.<sup>181</sup> Bloom rates evaluation as the highest educational objective with analysis also important.<sup>182</sup> By contrast, Schulman's seven-stage classification system is orientated towards blocks of knowledge relating to teaching given its focus on knowledge relating education and pedagogy.<sup>183</sup>

**TABLE 7: Reflective Taxonomy and Suitability for Journal Evaluation**

Study	Taxonomy <sup>184</sup>	Suitability
Sumsion & Fleet <sup>185</sup>	Modified Boud, Keogh and Walker	Suitable (High Levels of Reflection reported)
Wong et al <sup>186</sup>	Mezirow	Suitable (Low Levels of Reflection reported as more common than High Levels of Reflection)
Kember et al <sup>187</sup>	Mezirow	Suitable
King <sup>188</sup>	Moon	Suitable
Loo & Thorpe <sup>189</sup>	Scanlan and Chernomas	Suitable
Williams et al <sup>190</sup>	Modified Boud	Suitable (High Levels of Reflection reported)
Dyment & O'Connell <sup>191</sup>	Bloom	Different Taxonomy Recommended
Thorpe <sup>192</sup>	Modified Wong et al, Kember, Scanlan and Chernomas	Scanlan and Chernomas Recommended
Jenson & Joy <sup>193</sup>	Mezirow	Suitable (Low Levels of Reflection reported as more common than High Levels of Reflection)
Plack et al <sup>194</sup>	Boud, Mezirow, Schon	Suitable

<sup>176</sup> Mezirow et al, above n 171; Kember, above n 21.

<sup>177</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>178</sup> Moon, above n 166.

<sup>179</sup> Scanlon and Chernomas, above n 175.

<sup>180</sup> Valli in Minott, above n 27; Donald Schon, *The Reflective Practitioner* (Basic Books, 1983).

<sup>181</sup> Hatton and Smith, above n 172.

<sup>182</sup> Bloom, above 165.

<sup>183</sup> Lee Shulman, 'Knowledge and Teaching: Foundations of the New Reform' (1987) 57 *Harvard Educational Review* 1.

<sup>184</sup> Bloom, above n 165; Moon, above n 166; Boud, Keogh and Walker, above 167; Mezirow et al, above n 171; Wong, Kember, Scanlan and Chernomas in Thorpe, above n 26; Schulman, above n; Valli in Minott above n 27; Schon in King and LaRocco, above n 27; Hatton and Smith, above n 175; Findlay, Dempsey and Whalen Ford, above n 21.

<sup>185</sup> Sumsion and Fleet, above n 27.

<sup>186</sup> Wong et al, above n 26.

<sup>187</sup> Kember et al, above n 21.

<sup>188</sup> King, above n 11.

<sup>189</sup> Loo and Thorpe, above n 24.

<sup>190</sup> Williams et al, above n 25.

<sup>191</sup> Dyment and O'Connell, above n 10.

<sup>192</sup> Thorpe, above n 26.

<sup>193</sup> Jenson and Joy, above n 26.

<sup>194</sup> Plack et al, above n 25.



Study	Taxonomy	Suitability
King & LaRocco <sup>195</sup>	Schon	Suitable
Minott <sup>196</sup>	Modified Valli	Suitable (Some Levels of Reflection were not reached)
Gulwadi <sup>197</sup>	Hatton and Smith	Suitable
Hume <sup>198</sup>	Schulman	Suitable (Interventionist Strategies needed to improve Reflection)
Bisman <sup>199</sup>	Bloom	Suitable
Findlay, Dempsey & Whalen Ford <sup>200</sup>	Mezirow and the Newcastle Reflection Inventories	Suitable but short form responses only & further testing needed

Table 7 shows Mezirow's taxonomy to be the most commonly used model, applied in approximately one-third of the studies. One of the five studies recommended the model,<sup>201</sup> with two of the five studies reporting low levels of reflection.<sup>202</sup> The remaining ten taxonomies are used in less than one-fifth of the studies.<sup>203</sup> Reported limitations include failing to attain levels of reflection,<sup>204</sup> failure to implement the model correctly,<sup>205</sup> failure to comprehend the model and questioning the contextually inappropriateness of the model.<sup>206</sup> The studies reveal a lack of consensus about the most appropriate reflective taxonomy to test levels of reflective journaling or how to provide students with guidance to help develop their reflective journaling. This lack of consensus suggests the need for a more critical and sustained investigation of critically reflective taxonomies.

#### *H Pedagogical Strategies of the Studies*

The studies indicate a shift from more traditional academic, teacher-centred pedagogy, which positions the students as passive recipients of the knowledge the teacher imparts,<sup>207</sup> to a more student-centred pedagogy.<sup>208</sup> The latter focuses on what the student does in relation to the intended learning outcomes, which need to be met within a particular course.<sup>209</sup> Table 8 lists some of the studies with less traditional pedagogical strategies. They reveal the importance of pedagogical aims of student-centred learning. Each of the strategies can have varied definitions. In the legal education context, student-centred learning means 'teaching with student focus, understanding how students learn and teaching in a way that will promote

<sup>195</sup> King and LaRocco, above n 27.

<sup>196</sup> Minott, above n 27.

<sup>197</sup> Gulwadi, above n 20.

<sup>198</sup> Hume, above n 27.

<sup>199</sup> Bisman, above n 12.

<sup>200</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>201</sup> Kember et al, above n 21.

<sup>202</sup> Jenson and Joy, above n 26; Wong et al, above n 26.

<sup>203</sup> Table 7.

<sup>204</sup> Ibid.

<sup>205</sup> Hume, above n 27.

<sup>206</sup> Dymont and O'Connell, above n 10.

<sup>207</sup> Michelle Anstey and Geoff Bull (eds), *The Literacy Labyrinth* (Prentice Hall, 2<sup>nd</sup> ed, 2004); Michelle Anstey and Geoff Bull (eds), *The Literacy Lexicon* (Prentice Hall, 1996).

<sup>208</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (McGraw Hill, 4<sup>th</sup> ed, 2011) 8-9, 118.

<sup>209</sup> Ibid 118.

this'.<sup>210</sup> Such an approach has been welcomed in legal education and encourages less traditional assessment tasks.<sup>211</sup> For example, active learning means students 'should participate in their own learning through class projects, presentations, asking questions, discussion and involvement with their law studies outside class'.<sup>212</sup>

Skills-based learning focuses on critical reflection, thinking and active learning. These skills are endorsed in teaching and learning outcomes and embedded nationally with the law standards framework, making them essential within curricula.<sup>213</sup> Legal education is obliged to focus on the TLOs when intended learning outcomes for courses are developed. It includes the acquisition of knowledge, equipping individuals for workplace, in the future learning, collaborative resolution of conflict and education leading to personal development.<sup>214</sup> It embraces learning in an extensive range of settings from formal learning environments, such as the classroom, together with non-formal environments such as work experience or voluntary work and other social contexts.<sup>215</sup> Other pedagogical strategies relate to self-awareness about learning through self-set goals, self-learning, individual learning and most significant learning.

**TABLE 8: Table of Pedagogical Strategies**

Study	Discipline	Pedagogical Strategies
Katz <sup>216</sup>	Law	Student-Centred Learning
Loo & Thorpe <sup>217</sup>	Management	Active Learning Self-Set Goals and Tasks
Swindell & Watson <sup>218</sup>	Social Work	Student-Centred Learning Active Learning
Hume <sup>219</sup>	Education	Enhancing Student Critical Thinking Reflective Skills Self-Assessment of Learning Skills
Thorpe <sup>220</sup>	Nursing	Active Learning
Dymont & O'Connell (2007) <sup>221</sup>	Outdoor Experiential Education	Student-Centred
Pavlovich <sup>222</sup>	Management	Most Significant Learning
Zahra <sup>223</sup>	Tourism	Self-Learning
Bisman <sup>224</sup>	Accounting	Individual Learning

<sup>210</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 5.

<sup>211</sup> Ibid.

<sup>212</sup> Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

<sup>213</sup> Johnstone, above n 211.

<sup>214</sup> Stella Cottrell, *Study Skills* (Palgrave Macmillan, 4<sup>th</sup> ed, 2013).

<sup>215</sup> Ibid.

<sup>216</sup> Katz, above n 23.

<sup>217</sup> Loo and Thorpe, above n 24.

<sup>218</sup> Swindell and Watson, above n 17.

<sup>219</sup> Hume, above n 27.

<sup>220</sup> Thorpe, above n 26.

<sup>221</sup> Dymont and O'Connell, above n 10.

<sup>222</sup> Pavlovich, above n 24.

<sup>223</sup> Zahra, above n 19.

<sup>224</sup> Bisman, above n 12.

## *I Frequency of Journaling and Other Pedagogical Techniques in the Studies*

Most of the studies<sup>225</sup> show how much time is recommended for student journaling and the pedagogical techniques successfully used in conjunction with journaling.<sup>226</sup>

**TABLE 9: Frequency of Journal Writing and Other Techniques for Reflective Practice**

Studies	Frequency and Method	Other Methods to use with Journaling
Swindell & Watson Social Work (Ethics) <sup>227</sup>	Weekly with Class Time allocated for Self-Reflective Journal	Case Vignettes on Ethical Dilemmas Guest Speakers
Hume (Education) <sup>228</sup>	Frequency is not specified  Workshop on Journaling  Scaffolding of Techniques	Teaching Strategies for Reflective Writing Post Box Activities Group Problem Solving Representations Writing Papers, Periods for Practicing Reflective Writing Feedback & Feed forward
Dyment & O'Connell (Outdoor Education) <sup>229</sup>	Workshop on Journaling	Instruction, Guidance, Feedback
King (Information Systems/ Computing) <sup>230</sup>	Weekly On-Line Journaling Video Recording of a Reflective Writing Session for guidance OR a One-hour session on Reflective Writing	Supervised work Sessions, Evaluation on Reflective Exercises
Katz (Law) <sup>231</sup>	Entry Frequency is not specified Feedback via Dialogue and Meetings with Instructor	Designed writing assignments linked to the Classroom Journal and an Essay on the same theme OR an Essay as an alternative to the Journal, Faculty Dialogue, Journal Sharing in Class
Loo & Thorpe (Management) <sup>232</sup>	Twice weekly journaling but daily encouraged; Guided journaling	Dialogue
King & LaRocco <sup>233</sup> (Education)	Weekly journaling On-line feedback	Dialogue
Beveridge (Mathematics) <sup>234</sup>	Weekly for 10 weeks Variation in topic depending on level of student	10 minutes of practiced reflection at the end of each class
Haigh (Geography) <sup>235</sup>	Frequency not specified	Discussions Presentations & Essay
Pavlovich (Management) <sup>236</sup>	Three Reflective Journals	Report addressing Student's Most Significant Learning
Kember et al (Health Sciences) <sup>237</sup>	Several Journal Entries	Reflective Paper
Zahra (Tourism) <sup>238</sup>	Weekly Collection Feedback given in some weeks	

<sup>225</sup> Over 80% of the studies specify times recommended for journaling.

<sup>226</sup> Ibid.

<sup>227</sup> Swindell and Watson, above n 17.

<sup>228</sup> Hume, above n 27.

<sup>229</sup> Dyment and O'Connell (2003), above n 10.

<sup>230</sup> King, above n 13.

<sup>231</sup> Katz, above n 23.

<sup>232</sup> Loo and Thorpe, above n 24.

<sup>233</sup> King and LaRocco, above n 27.

<sup>234</sup> Beveridge, above n 14.

<sup>235</sup> Haigh, above n 15.

<sup>236</sup> Pavlovich, above n 24.

<sup>237</sup> Kember et al, above n 21.

<sup>238</sup> Zahra, above n 19.

Studies	Frequency and Method	Other Methods to use with Journaling
Snadden et al (Medicine) <sup>239</sup>	Frequency is not set Action Research	Interviews used as a teaching tool for guidance and clarification Instructor enthusiasm
Murray (Physical Therapy) <sup>240</sup>	Daily entries Formatted Journal given to patients	Art expressing themes Literature giving first person accounts Film digital photography using captions
Thorpe (Nursing) <sup>241</sup>	Frequency is not clear	Group dialogue Mini case studies
Wright (Nursing) <sup>242</sup>	Frequency is not clear	Peer Dialogue
Palmer (Engineering) <sup>243</sup>	Weekly journal entries Sharing of journal entries on-line	
Otienoh (Teaching) <sup>244</sup>	Daily reflection encouraged	
Bisman (Accounting) <sup>245</sup>	Frequent reflection	Structured and directed journal tasks Activities
Minott (Education) <sup>246</sup>	Five entries over a semester submitted	Recommended instruction needed on critical reflection
Plack et al (Physical Therapy) <sup>247</sup>		Recommended reinforcement Repetition of the reflective framework
Jenson & Joy (Nursing) <sup>248</sup>	Three journals completed at the beginning, middle and end of the course, Learning activities on reflections	
Williams (Physical Therapy) <sup>249</sup>	Weekly reflections Guided journaling	
Gulwadi (Interior Design) <sup>250</sup>	Class discussions Weekly entries plus three writing exercises	
Baker (Education) <sup>251</sup>	Re-reading of previous entries	

The frequency of journaling varies between daily, weekly or a few times over the course of a semester. Most researchers encourage students to journal frequently to practice the skills required for critically reflective writing.<sup>252</sup> Lack of time for journaling is a common concern noted.<sup>253</sup> Only one study found that journaling skills did not improve over time.<sup>254</sup> A plausible explanation for this relates to critically reflective skills, which are taught at the beginning of the course are not necessarily reinforced throughout.<sup>255</sup>

The encouragement of reflective practice is important because many students may not have had exposure to the technique of journaling.<sup>256</sup> Practice of journaling is arguably part of a skills-based pedagogy given that reflective writing includes the ability to critically reflect.

<sup>239</sup> Snadden et al, above n 16.

<sup>240</sup> Murray, above n 25.

<sup>241</sup> Thorpe, above n 26.

<sup>242</sup> Wright, above n 22.

<sup>243</sup> Palmer, Holt and Bray, above n 18.

<sup>244</sup> Otienoh, above n 27.

<sup>245</sup> Bisman, above n 12.

<sup>246</sup> Minnott, above n 27.

<sup>247</sup> Plack et al, above n 25.

<sup>248</sup> Jenson and Joy, above n 26.

<sup>249</sup> Williams, above n 25.

<sup>250</sup> Gulwadi, above n 20.

<sup>251</sup> Baker, above n 27.

<sup>252</sup> See, eg, Lew and Smidt, above n 27; Jenson and Joy above n 26; Minott, above n 27; Williams, above n 25; Otienoh, above n 27; Palmer, Holt and Bray, above n 18; Murray, above n 25; Zahra n 19, King, above n 13; Swindell and Watson, above n 17.

<sup>253</sup> Dymont and O'Connell (2003), above n 10; Dymont and O'Connell (2006), above n 10; King, above n 11; Hutchinson and Cuffe, above n 23; Zahra, above n 19; Hume, above n 27; Snadden et al, above n 16; Wright, above n 22; Swindell and Watson, above n 17; Otienoh, above n 27.

<sup>254</sup> Jenson and Joy, above n 26.

<sup>255</sup> Ibid.

<sup>256</sup> Dymont and O'Connell (2003) above n 10; Dymont and O'Connell (2006), above n 10.

Critical reflection is a skill important to professional development.<sup>257</sup> Varied techniques can also be used to assist with critically reflective journaling, including workshops providing instruction and guidance, formative and summative feedback, sharing journal entries, class discussion, seminars, meetings with instructors, dialogue and using the action research interviews as a tool for learning.<sup>258</sup>

Techniques used to supplement journaling include specific instruction on critical reflection, and group and peer dialogue.<sup>259</sup> The most common combination, in the selected studies, is journaling in conjunction with dialogue with both lecturers and peers. Class discussions, sharing ideas and group work, which involve dialogue are also prevalent. This supports the recommendation for group or peer dialogue as a means of offering students different learning experiences and exposure to new perspectives. It seems that different forms of activities in addition to journaling are an appropriate way to enhance student learning.<sup>260</sup>

Other techniques identified in the studies include the use of case studies, vignettes, guest speakers, problem solving, essays, discussions, class reflection time, reflective papers/exercises, sharing of exemplars and supervised work sessions.<sup>261</sup> This range of techniques offers additional benefits to be used with journaling as part of a repertoire of teaching tools for building into the legal curriculum. Some of the studies recommend the use of art,<sup>262</sup> digital photography,<sup>263</sup> poems or creative writing,<sup>264</sup> computers,<sup>265</sup> on-line dialogue<sup>266</sup> and video<sup>267</sup> as innovative pedagogical techniques. The diversity of pedagogical techniques encouraged in higher educational literature has seen endorsement more recently vis-à-vis legal education.<sup>268</sup>

### *J Aims and Topics of the Studies*

While the journaling studies exhibit some overarching similarities, they also reveal a variety of topics and aims, as illustrated in Table 10. In particular, the core similarities target the examination of the benefits and limitations of journaling and student perceptions of journaling. The views of students are just one perspective to take into consideration. Educators' perceptions of journaling are informative about the value of reflective journaling

<sup>257</sup> See, eg, Normann Witzleb and Natalie Skead, 'Mapping and Embedding Graduate Attributes Across the Curriculum,' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 40; Katz, above n 23, 909.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> Suzanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving And Sustaining Excellence In A Changed And Changing Environment* (Australian Learning and Teaching Council, 2009).

<sup>261</sup> Swindell and Watson, above n 17; Hume, above n 27; Katz, above n 23; Haigh, above n 15; Beveridge, above n 14; Thorpe, above n 26; Wright, above n 22; Haigh, above n; 15; Gulwadi, above n 20; Lew and Schmidt, above n 27.

<sup>262</sup> Murray, above n 25.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> King, above n 13.

<sup>266</sup> King and LaRocco, above n 27; Lew and Schmidt, above n 27; Palmer, Holt and Bray, above n 18.

<sup>267</sup> Jenson and Joy, above n 26.

<sup>268</sup> See, eg, Owen and Davis, above n 261.

from a teaching perspective.<sup>269</sup> Other common aims of the studies relate to reaching the levels of reflection in reflective taxonomies and meeting educational objectives. More diverse aims relate to understanding the role of reflection and examining the journal and its promotion, in terms of learning benefits.<sup>270</sup>

**Table 10: Aims and Topics of the Journaling Studies**

Studies	Aims	Topic(s)
Dyment and O'Connell (2003) <sup>271</sup>	To examine student perceptions of journaling in experiential-based field courses	Student perceptions of journaling
King (2002) <sup>272</sup>	To analysis the role of reflection has in the learning process and its link to deeper learning	Reflection Student Learning
Hutchinson & Cuffe (2004) <sup>273</sup>	To extend research capacities of students by the use of a reflective journal	Journal writing to meet educational objectives
Sutton et al (2007) <sup>274</sup>	To explore the value and utility of journals	The benefits and limitations of journaling
King & LaRocco (2006) <sup>275</sup>	To examine e-journaling as a means for promoting student and instructor reflectivity	Reflection
Beveridge (1997) <sup>276</sup>	To encourage students to think more deeply & listen more effectively by using reflective journals	Deep learning & listening Student perceptions
Haigh (2001) <sup>277</sup>	To examine how students view journal writing, How journals inform instructors in relation to learning and other components of the course and key problems with journaling To meet educational objectives	Student perceptions of journaling, Student learning Limitations of journaling
Pavlovich (2007) <sup>278</sup>	To review reflection in terms of development of students' self-awareness and inner leadership To meet educational/professional objectives	Reflection
Kember (1999) <sup>279</sup>	To devise a method for assessing reflective thinking by examining reflective journals	Reflection Models for assessment
Thorpe (2004) <sup>280</sup>	To promote professional practice that is reflective rather than routine To meet educational objectives	Reflection
Katz (1997) <sup>281</sup>	To examine the effectiveness and educative value of the journal assignment & to meet educational objectives	Benefits and limitations of journaling
Zahra (2008) <sup>282</sup>	To assess the suitability of learning journals as a form of assessment in the context of tourism and hospitality management To meet educational objectives	Benefits and limitations of journaling
Hume (2009) <sup>283</sup>	To trace the development of student journal in promoting enhanced learning of how to teach science	To meet educational objectives
Snadden et al (1996) <sup>284</sup>	To examine to what extent learning logs are suitable to GP registrars and trainers To meet educational objectives	Student perceptions of journaling
Kennison & Misselwitz (2002) <sup>285</sup>	To demonstrate critical thinking in reflective writing To assess whether reflective writing offers a valid method of fostering and evaluation critical thinking and to examine consistency in the evaluation of critical thinking in nursing	Critical thinking and reflection or assessment
Murray (1997) <sup>286</sup>	To explore the benefits and limitations of journaling for physical therapy patients	Benefits and limitations of journaling
Wright (2005) <sup>287</sup>	To show the perceptions of students in psychotherapy of journaling and its utility for reflection	Student perceptions and the utility for reflection for learning

<sup>269</sup> Table 10.

<sup>270</sup> Ibid.

<sup>271</sup> Both Dyment and O'Connell studies in 2003, above n 10.

<sup>272</sup> King, above n 13.

<sup>273</sup> Hutchinson and Cuffe, above n 23.

<sup>274</sup> Sutton, Townend and Wright, above n 22.

<sup>275</sup> King and LaRocco, above n 27.

<sup>276</sup> Beveridge, above n 14.

<sup>277</sup> Haigh, above n 15.

<sup>278</sup> Pavlovich, above n 24.

<sup>279</sup> Kember, above n 21.

<sup>280</sup> Thorpe, above n 26.

<sup>281</sup> Katz, above n 23.

<sup>282</sup> Zahra, above n 19.

<sup>283</sup> Hume, above n 27.

<sup>284</sup> Snadden et al, above n 16.

<sup>285</sup> Kennison and Misselwitz, above n 26.

<sup>286</sup> Murray, above n 25.

<sup>287</sup> Wright, above n 22.

Studies	Aims	Topic
Swindell & Watson (1996) <sup>288</sup>	To examine whether the benefits of the journal in relation to solving ethical problems	Student perceptions To meet educational objectives
Palmer, Holt and Bray (2008) <sup>289</sup>	To analyse the use of student journals to investigate contribution towards learning objectives	Student perceptions of journaling
Wong et al (1997) <sup>290</sup>	To prepare nurses to be reflective practitioners and to explore teaching and learning strategies	Appropriateness of teaching and learning strategies in relation to reflection
Lew & Schmidt (2007) <sup>291</sup>	To assess the extent to which students believed that journal writing contributed to their learning	Student perceptions of journaling
Otienoh (2009) <sup>292</sup>	To explore the challenges with sustaining the practice of reflecting through journal writing.	Teacher perceptions of journaling and the limitations of journaling
Findlay, Dempsey and Ford (2010) <sup>293</sup>	To develop a tool to assess freeform writing for evidence of reflection	Assessing reflection
Bisman (2010) <sup>294</sup>	To introduce the journal to address concerns relating to poor uptake of teaching and learning innovations in accounting & to meet educational objectives	Benefits and limitations of journaling
Loo & Thorpe (2001) <sup>295</sup>	To assess the utility of the journal as a method of improving performance in management	Use for professional/educational objectives and perceptions
Minott (2008) <sup>296</sup>	To determine types of reflection engaged in To evaluate Valli's typology.	Assessing Reflection Typology
Plack et al (2005) <sup>297</sup>	To develop and test a method for assessing elements of reflection in journals & to examine whether reflection occurs in journal writing	Assessing reflection and to met professional objectives
Jenson & Joy (2005) <sup>298</sup>	To what extent and at what level is reflection on action identified in journals of nursing students.	Assessing reflection using a typology
Sumsion & Fleet (1996) <sup>299</sup>	To investigate the extent to which students demonstrated a reflective approach to professional development, the effectiveness of an instrument for identifying reflection and to explore the potential relationship between academic grades, reflection and learning	Assessing reflection
Williams (2002) <sup>300</sup>	To meet professional development and educational objectives Students perceptions of learning & reflective thinking	Students perceptions of learning & reflective thinking
Gulwadi (2009) <sup>301</sup>	To introduce a pedagogical method to encourage reflection on aspects of design	Assessing reflection
Baker (2009) <sup>302</sup>	To examine whether journaling can be used to address the lack of confidence with engagement worth the teaching of music & to reveal the perceptions of students regarding the benefits of journaling	The benefits and limitations of journaling

When researchers use the same models of reflection, the results can differ in relation to levels of reflection achieved<sup>303</sup> and a lack of consensus on appropriate reflective models to use.<sup>304</sup> A number of the studies show a positive connection between using a qualitative methodological analysis of journal texts and successful implementation of a reflective taxonomy.<sup>305</sup>

<sup>288</sup> Swindell and Watson, above n 17.

<sup>289</sup> Palmer, Holt and Bray, above n 18.

<sup>290</sup> Wong et al, above n 26.

<sup>291</sup> Lew and Schmidt, above n 27.

<sup>292</sup> Otienoch, above n 27.

<sup>293</sup> Findlay, Dempsey and Whalen Ford, above n 21.

<sup>294</sup> Bisman, above n 12.

<sup>295</sup> Loo and Thorpe, above n 24.

<sup>296</sup> Minott, above n 27.

<sup>297</sup> Plack et al, above n 25.

<sup>298</sup> Jenson and Joy, above n 26.

<sup>299</sup> Sumsion and Fleet, above n 27.

<sup>300</sup> Williams, above n 25.

<sup>301</sup> Gulwadi, above n 20.

<sup>302</sup> Baker, above n 27.

<sup>303</sup> Table 7.

<sup>304</sup> Ibid.

<sup>305</sup> Sumsion and Fleet, above n 27; Loo and Thorpe, above n 24; Kember at al, above n 21.

### III ANALYSIS OF JOURNALING STUDIES: APPLICATION FOR REFLECTIVE JOURNALING FOR FOUNDATION LAW STUDENTS

Table 11 reveals the findings of the inquiry from the quantitative factors measured, including the country of origin of the studies, the disciplines the studies came from and the level of students in the studies. In relation to each factor examined, findings support using reflective journaling for undergraduate foundation law students in Australia.

**Table 11: Factors, Findings and Relevance of Reflective Journaling for Australian Foundation Students**

Factors examined	Findings	Relevance
<b>Origin of the Study</b>	Majority of studies come from common law countries <sup>306</sup>	Australia is a common law country
<b>Discipline of the Study and Applicability of Journaling to the Discipline</b>	Multiple Professional Disciplines Many studies come from Education and Nursing <sup>307</sup> Involve Practicums and Real Life Learning Experiences <sup>308</sup> Journaling is effective for Reflecting on Real Life Experiences <sup>309</sup>	Law is a profession Legal Education can involve Real Court Experiences, particularly in Foundation Year Journaling about Real Life Legal Experiences is likely to be effective
<b>Level of Students</b>	Three quarters of the Studies involve Undergraduate Students and one quarter of Studies involve Post Graduate students <sup>310</sup>	The Research is relevant for Undergraduate Foundation Law Students

As noted earlier, the majority of studies stem from common law countries, including Australia, from multiple professions, including law. With one exception,<sup>311</sup> the studies note the pedagogical potential of journaling to a wide range of disciplines, including law. Real experiences, such as court observations, provide highly appropriate material for journaling.<sup>312</sup> James and Field also recommend that students use journaling to improve their critical thinking skills, particularly in developing a critical disposition towards, independent thinking.<sup>313</sup> Most of the studies involve undergraduate students making the findings relevant for undergraduate law students.

<sup>306</sup> See studies in Table 2.

<sup>307</sup> See studies in Table 1.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Undergraduate studies include Dymont and O'Connell (2003), above n 10; Bisman, above n 12; Beveridge, above n 14; Haigh, above n 15; Swindell and Watson, above n 17; Palmer, Holt and Bray, above n 18; Zahra, above n 19; Gulwadi, above n 20; Findlay, Dempsey and Whalen Ford, above n 21; Kember, above n 21; Katz, above n 23; Pavlovich, above n 24; Plack et al, above n 25; Loo and Thorpe, above n 24; Murray, above n 25; Williams, above n 22; Kennison and Misselwitz, above n 26; Jenson and Joy, above n 26; Thorpe, above n 26; Wong et al, above n 26; Baker, above n 27; Hume, above n 27; Lew and Schmidt, above n 27; Otienoch, above n 27; Post Graduate Studies include King, above n 11; Snadden et al, above n 16; Hutchinson and Cuffe, above n 23; Sutton, Townend and Wright, above n 22; King and LaRocco, above n 27; Wright, above n 22; Minott, above n 27; Sumson and Fleet, above n 27.

<sup>311</sup> Bisman, above n 12.

<sup>312</sup> Kelley Burton and Judith McNamara, 'Assessing Reflection Skills in Law Using Criterion-Referenced Assessment' (2009) 19 *Legal Education Review* 171; Judith McNamara and Rachael Field, 'Designing for Reflective Practice in Legal Education' (2007) 2 *Journal of Learning Design* 66.

<sup>313</sup> James and Field, above n 8, 297.



#### IV TECHNIQUES TO ASSIST WITH THE DEVELOPMENT OF REFLECTIVE WRITING

While journaling offers a more liberating alternative to traditional pedagogy as a means of providing variety, studies speak of the need for educators to be committed to journaling prior to introducing it into the curriculum.<sup>314</sup> A journaling task can be time-consuming,<sup>315</sup> labour intensive and challenging.<sup>316</sup> While some students are engaged by journaling, educators need to be aware other students hold negative and neutral perspectives so that there may be some opposition to this form of assessment.<sup>317</sup> Once commitment to teaching journaling is established, the common findings relating to these studies show that various techniques may assist with journaling and transform negative perceptions of journaling to more positive perceptions.<sup>318</sup>

An important technique is to provide ample and clear instructions on how to journal.<sup>319</sup> Some students' negative perceptions relate to uncertainty over aspects of journaling, including its purpose, evaluation criteria and structure.<sup>320</sup> Feedback in relation to writing is crucial for enhanced learning.<sup>321</sup> More than one-half of the studies recommend some type of instruction or intervention and list strategies to improve the quality of journaling.<sup>322</sup> Whilst a number maintain that these strategies have proven effective, others suggest that the strategies require adjustment.<sup>323</sup>

Several studies show that journaling improves with experience.<sup>324</sup> Practising this form of writing regularly has been recommended,<sup>325</sup> especially with the provision of a supportive environment. Guidance with journal writing is also a positive way to assist students with writing. Many of the studies show that some students struggle with the expected

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<sup>314</sup> Baker, above n 27; Loo and Thorpe, above n 24; Otienoh, above n 27; Lew and Schmidt, above n 27; Bisman, above n 12; Palmer, Holt and Bray, above n 18; Swindell and Watson, above n 17; Haigh, above n 15; Beveridge, above n 14; Wright, above n 22; Snadden et al, above n 16; Dymont and O'Connell (2003), above n 10.

<sup>315</sup> Otienoh, above n 27; Hume, above n 27; Zahra, above n 19; Thorpe, above n 26; Hutchinson and Cuff, above n 23; King, above n 11; Dymont and O'Connell (2003), above n 10; Haigh, above n 15; Kennison and Misselwitz, above n 26.

<sup>316</sup> Haigh, above n 15; Kennison and Misselwitz, above n 26.

<sup>317</sup> See, eg, Sutton, Townsend, Wright, above n 22; Wright, above n 22; King and La Rocco, above n 27; Beveridge, above n 14; Haigh, above n 15; Zahra, above n 19; Swindell and Watson, above n 17.

<sup>318</sup> Dymont and O'Connell (2003), above n 10.

<sup>319</sup> McNamara, Campbell and Cockburn, above n 1; Cassandra Star and Jacquelin McDonald, 'Embedding Successful Pedagogical Practices: Assessment Strategies for Large, Diverse, First Year Student Cohort' (2007) 3 *International Journal of Pedagogy and Learning* 18.

<sup>320</sup> See, eg, Sutton, Townsend, Wright, above n 22; King and La Rocco, above n 27; Beveridge, above n 14; Haigh, above n 15; Zahra, above n 19; Swindell and Watson, above n 17.

<sup>321</sup> James and Field, above n 8, 359, 362.

<sup>322</sup> Table 9.

<sup>323</sup> Ibid.

<sup>324</sup> Hume, above n 27; Wright, above n 22; Wong et al, above n 26; Bisman, above n 12; Thorpe, above n 26; King and LaRocco, above n 27; James and Field, above n 8, 353-358; Penelope Watson and Rachel Field, 'Promoting Student Well-being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 390, 411, 419.

<sup>325</sup> Table 9.

style of writing required for journaling.<sup>326</sup> This could be attributable to lack of experience and instruction with this type of writing. Other studies find students' writing overly descriptive,<sup>327</sup> and failing to make the connections between theory and practice needed for critical analysis.<sup>328</sup> Introduction to models of critical reflection and their composition can assist students with reflective skills. Students can be guided in different ways including through written material, lectures, seminars or tutorials. Guidance by use of exemplars,<sup>329</sup> handouts and formative feedback assist students with journaling.<sup>330</sup>

A supportive environment<sup>331</sup> with a level of trust between instructor and student, particularly in relation to confidentiality, has been endorsed.<sup>332</sup> Such an environment is also seen as important for group work.<sup>333</sup> Sometimes expressing feelings can result in a range of different experiences ranging from disturbing to therapeutic.<sup>334</sup> Exposure of private thoughts and feelings may also make a student feel vulnerable.<sup>335</sup> Enthusiasm of the instructors is important for engagement.<sup>336</sup> Students need to be encouraged to be open minded and willing in order to be engaged.<sup>337</sup>

## V CURRENT LITERATURE ON REFLECTIVE JOURNALING

Table 12 outlines some major findings of more recent studies of reflective journaling, constructed from a *Summons* library search.

**TABLE 12: Examples of Studies on Reflecting Journaling**

Author(s)	Discipline	Finding(s) in relation to Reflective Journaling
Dyment & O'Connell <sup>338</sup>	Education	Student views on journaling are mixed There are benefits and challenges of journaling for students and teachers
Slotnick & Janesick <sup>339</sup>	Educational Policy	Reflective journaling is shown as a critical interpretive tool for educational policy
Parent & Lovelace <sup>340</sup>	Business	In-class dialogue and reflective journaling offer rich learning experiences
Wimmer <sup>341</sup>	Leadership	Journaling helps with analysis of leadership in popular culture

<sup>326</sup> Wright, above n 22; Pavlovich, above n 24; Zahra, above n 20.

<sup>327</sup> Dyment and O'Connell, above n 10; Swindell and Watson, above n 17.

<sup>328</sup> Dyment and O'Connell, above n.

<sup>329</sup> Dyment and O'Connell, above n; Haigh, above n 15; Hume, above n 27; Wong et al, above n 26.

<sup>330</sup> Dyment and O'Connell, above n; Murray, above n 25.

<sup>331</sup> Claire Macken, 'Law School Engagement: The Curricula and the Co-Curricular Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011), 316, 324-328; James and Field, above n 8, 28, 30-32.

<sup>332</sup> Sutton, Townsend and Wright, above n 22; King, above n 24; Dyment and O'Connell (2003), above 10; Hutchinson and Cuffe, above n 23; King and LaRocco, above n 27; Pavlovich, above n 24; Snadden et al, above n 16; Wright, above n 22; Minott, above n 27.

<sup>333</sup> James and Field, above n 8, 334, 354; Macken, above n 336, 323, 324 [12.18]-[12.20].

<sup>334</sup> Wright, above n 22.

<sup>335</sup> Beveridge, above n 14; Wright, above n.

<sup>336</sup> Snadden et al, above n 16; Swindell and Watson, n 17; John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw-Hill, 2011) 6.

<sup>337</sup> Ibid.

<sup>338</sup> Janet Dyment and Timothy O'Connell, 'The Case of Reflective Journals-Is the Jury Still Out?' (2011) 12 *Reflective Practice: International and Multidisciplinary Perspectives* 47

<sup>339</sup> Valerie Slotnick and Ruth Janesick, 'Conversations on Method: Deconstructing Policy through the Researcher Reflective Journal' (2011) 16 *The Qualitative Report* 1352.

<sup>340</sup> Jane Parent and Kathy Lovelace, 'Creating a Learning Organization in the Management Classroom through Dialogue and Reflective Journaling' (2011) 6 *Business Renaissance Quarterly* 21.

<sup>341</sup> Gaea Wimmer, Courtney Meyers, Haley Porter and Martin Shaw, 'Learning Vicariously: Student Reflections of the Leadership Lessons Portrayed in "The Office"' (2012) 11 *Journal of Leadership Education* 52.

Author(s)	Discipline	Finding(s) in relation to Reflective Journaling
Anderson <sup>342</sup>	Geography	Journal writing facilitates deep learning, empowerment in relation to the nexus between theory and practicing sustainability and the critical analysis of broader processes through a mutually supportive and respectful learning environment Journaling needs to be taught through engaging lecturing and supportive discussion
Brooman & Darwent <sup>343</sup>	Law	Journaling can be positive for first year university students The use of journaling early in semester, instruction, and recognition that it does not suit all students are recommendations
Cohen-Sayag & Fischl <sup>344</sup>	Special Education	Field experiences assists with thinking about and reflecting about special education
Furtado & Anderson <sup>345</sup>	Education	Journaling is improved with guidance, peer dialogue and mentoring Journaling can assist with growth of knowledge, empowerment, confidence and enhanced professional leadership
Giguere <sup>346</sup>	Dance Education	Guided repeated regular interaction is recommended the learning and teaching of reflection
Hendrix et al <sup>347</sup>	Nursing	Students like limited time to journal, confidentiality, one-time feedback, a semi-structured format and behaviour recognition Students with more experience like the free-form structure of journaling
Hussainy et al <sup>348</sup>	Pharmacy	Journaling is a technique which helps students develop communication skills
Nanda <sup>349</sup>	Medicine	Journaling helps with teacher's feedback about how medical students learn to care for aging populations
Power <sup>350</sup>	University Language Program	Shows mixed views on journaling Recommendations include instruction on reflection, giving feedback and using both scaffolding and flexible frameworks for assessment of reflection
Shek & Woo <sup>351</sup>	Leadership	Reflective journals show significant benefits for learning Students like the course, have favourable perceptions of the instructors, perceive that the course was able to promote their holistic development and suggest course refinement
Sheridan & Dunne <sup>352</sup>	Higher Education	Journal writing is a useful and innovative tool to examine transitions from school to higher education
Tsang <sup>353</sup>	Oral Health	Levels of student reflection improve not only with practice and time but at times consistent with exposure to clinical and professional experiences and with access to feedback and guidance

Like earlier studies, current literature suggests that journaling can start in the foundation years and can successfully be used for reflection on transition periods.<sup>354</sup> Findings also confirm support of journaling with instruction,<sup>355</sup> feedback<sup>356</sup> and guidance.<sup>357</sup> Mentoring, for

<sup>342</sup> Jon Anderson, 'Reflective Journals as a tool for Auto-Ethnographic Learning: A Case Study of Students Experiences with Individualized Sustainability' (2012) 36 *Journal of Geography in Higher Education* 613.

<sup>343</sup> Simon Brooman and Sue Darwent, 'A Positive View of First-Year Undergraduate Reflective Diaries: Focusing On What Students Can Do' (2012) 13 *Reflective Practice: International and Multidisciplinary Perspectives* 517.

<sup>344</sup> ETTY Cohen-Sayag and Dita Fischl, 'Reflective Writing in Pre-Service Teachers Teaching: What does it promote?' (2012) 37 *Australian Journal of Teacher Education* 18.

<sup>345</sup> Lenna Furtado and Dawnette Anderson, 'The Reflective Teacher Leader: An Action Research Model' (2012) 22 *Journal of School Leadership* 531.

<sup>346</sup> Miriam Giguere 'Self Reflective Journaling: A Tool for Assessment' (2012) 12 *Journal of Dance Education* 99.

<sup>347</sup> Thomas Hendrix, Maureen O'Malley, Catherine Sullivan and Bernice Carmon, 'Nursing Student Perceptions of Reflective Journaling: A Conjoint Value Analysis' (2012) *International Scholarly Research Notices* 317.

<sup>348</sup> Safeera Hussainy, Kim Styles and Greg Duncan, 'A Practical Environment to Develop Communication Skills in Pharmacy Students' (2012) 76 *American Journal of Pharmaceutical Education* 202.

<sup>349</sup> Aman Nanda et al, 'Medical Students Recognition and Application of Geriatric Principles in a New Curriculum' (2013) 61 *Journal of American Geriatrics Society* 434.

<sup>350</sup> John Brian Power, 'Towards a Greater Understanding of the Effectiveness of Reflective Journals in a University Language Program' (2012) 13 *Reflective Practice* 637.

<sup>351</sup> Daniel Shek and Florence Wu, 'Reflective Journals of students taking a positive youth-development course in a university context in Hong Kong' (2012) *The Scientific World Journal* 131560.

<sup>352</sup> Vera Sheridan and Siobhan Dunne, 'The Bigger Picture: Undergraduate Voices reflecting on Academic Transition in an Irish University' (2012) 49 *Innovations in Education and Teaching International* 237.

<sup>353</sup> Annetta Tsang, 'Oral Health Students as Reflective Practitioners: Changing Patterns of Clinical Reflections over a Period of 12 months' (2012) 86 *The Journal of Dental Hygiene* 120.

<sup>354</sup> Brooman and Darwent, above n 344; Sheridan and Dunne, above n 353.

<sup>355</sup> See, eg, Parent and Lovelace, above n 341.

<sup>356</sup> Tsang, above n 354.

<sup>357</sup> Ibid.

example, is seen as positive for journaling.<sup>358</sup> Recent studies also endorse students' use of professional or clinical experiences for journaling.<sup>359</sup>

The pedagogical practice of journaling is also indicated to have improved with time, with access to instruction and guidance coupled with exposure to real life experiences.<sup>360</sup> More time engaging in journaling is likely to improve its quality by enhancing students' levels of critical reflection.<sup>361</sup> Mixed perceptions of journaling are evident in recent literature, supporting findings in earlier studies.<sup>362</sup> This means if perceptions are negative, more engaging pedagogical techniques might be needed. Popular culture, for instance, is a subject for journaling, which many students find engaging.<sup>363</sup> Dialogue, interaction and a supportive learning environment are also confirmed as ways to offer rich learning experiences.<sup>364</sup>

Reflective journaling in legal education has received growing support.<sup>365</sup> An Australian research study on reflective journaling found nearly all law students had a positive view about journaling as beneficial for their own progress, development, self-awareness or organisational skills.<sup>366</sup> In the United States, a link has been developed between law journaling as a means to improve emotional intelligence,<sup>367</sup> to enhance student understanding of material and the ability to think like a lawyer. Emotional intelligence is not specifically examined in the thesis. Reflective journaling as a means to develop transformative reflective practice has also recently seen endorsement in clinical legal education in Europe.<sup>368</sup>

## VI CONCLUSION

Early studies discussed in this chapter show that journaling is relatively popular in Western common law countries in a variety of disciplines, particularly those with practicums, such as nursing and education.<sup>369</sup> Court observation can be likened to practicums and therefore are appropriate experiences for undergraduate law students' reflections. While these studies are

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<sup>358</sup> Furtado and Anderson, above n 346.

<sup>359</sup> See, eg, Table 1; Cohen-Sayag and Fischl, above n 345; Charlotte Ross et al, 'Evaluation of Nursing Students' Work Experience through the use of reflective journals' (2014) 17 *Mental Health Practice* 21.

<sup>360</sup> Tsang, above n 354.

<sup>361</sup> Ibid.

<sup>362</sup> Power, above n 351; Dymont and O'Connell (2003), above n 10.

<sup>363</sup> Wimmer et al, above n 342.

<sup>364</sup> Parent and Lovelace, above n 345.

<sup>365</sup> Rachel Spencer, 'First they tell us to ignore our emotions, then they tell us to reflect': The Development of a Legal Writing Pedagogy in Clinical Legal Education Through Analysis of Student Perceptions of Reflective Writing' (2014) 21 *International Journal of Clinical Legal Education* <[http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2531215](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2531215)>; Nathalie Martin, 'Think Like a (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity and Emotional Intelligence into the First Year Law Curriculum' (2014) 36 *University of Arkansas at Little Rock Law Review* 1; John Landes, 'Lessons from Teaching Students to Negotiate Like a Lawyer' (2013) 15 *Cardozo Journal of Conflict Resolution* 25; Timothy Casey, 'Reflective Practice in Legal Education: The Stages of Reflection' (2014) 20 *Clinical Law Review* 318; Neil Gold 'Nurturing Professionalism Through Clinical Legal Education' (Paper presented at the International Journal of Legal Education and European Clinical Education Joint Conference, Olomouc, 17 July 2014).

<sup>366</sup> Spencer, above n 366.

<sup>367</sup> Martin, above n 366.

<sup>368</sup> Gold, above n 366.

<sup>369</sup> Table 1.

relatively small-scale, much can be learned from them in terms of findings because of their largely qualitative nature. Journaling is found to be suitable for both undergraduate students and postgraduate students.<sup>370</sup> Common research methods relate to coding and content analysis. Clarity of theoretical positioning also shows transparency. While such studies show that Mezirow's taxonomy of reflection is more commonly used than other taxonomies, more recent literature particularly in legal education does not use this taxonomy.<sup>371</sup> These earlier studies also show a focus on skills-based, active learning and student-centred learning.<sup>372</sup> Common topics of such journaling studies relate to perceptions of journaling and meeting of educational objectives.<sup>373</sup>

Recent studies reveal that journaling is becoming a pedagogical tool in a variety of higher education disciplines around the world and is expanding into more disciplines.<sup>374</sup> These confirm that journaling can have benefits from the first year of university as a forum to allow student reflections about transition periods.<sup>375</sup> While this thesis argues that journaling is an effective pedagogical tool, there is some evidence in the journaling literature there are some disadvantages.<sup>376</sup> When journals are formally assessed some students are influenced by this and feel that they do not have the freedom to write, as they would like to.<sup>377</sup> With intervention, students' perceptions of journaling can improve. Such intervention includes guidance, feedback, instruction and practice with reflection and reflective journaling are important to effective journaling.<sup>378</sup> This thesis argues that an engaging learning environment surrounding journaling is necessary to enhance its appeal. The use of positive dialogue and interaction between educators and students together with a supportive environment can work in conjunction with journaling to provide rich learning experiences.<sup>379</sup> Real experiences and the use of popular culture provide suitably engaging journaling topics, with a positive link between field/clinical experiences and timely effective journaling about those experiences are supported in recent literature.<sup>380</sup>

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<sup>370</sup> Chapter 5 II E.

<sup>371</sup> See, eg, Brooman and Darwent, above n 344; Above n 366, James and Field, above n.

<sup>372</sup> Table 8.

<sup>373</sup> Table 9.

<sup>374</sup> Dance education, a wider range of health sciences (oral health and pharmacy) and leadership courses.

<sup>375</sup> Brooman and Darwent, above n 344; Sheridan and Dunne, above n 353.

<sup>376</sup> See, eg, Snadden et al, above n 16; Brooman and Darwent, above n 344.

<sup>377</sup> Katz, above n 23.

<sup>378</sup> Table 9.

<sup>379</sup> Furtado and Anderson, above n 346.

<sup>380</sup> Tsang, above n 354; Wimmer, above n 342; Cohen-Sayag and Fischl, above n 345; Ross et al, above n 360.

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## CHAPTER 6: RESEARCH METHODOLOGY

### I INTRODUCTION

This chapter outlines the research design, combining several research methods, which capture the iterative nature of the research.<sup>1</sup> It addresses both the theory behind the methodological choices made for the research and how the methods of analysis, including the collection of the data, were implemented. The objective is to analyse two cohorts of foundation law students' reflective journal texts at UTAS in order to examine legal pedagogy, the attitudes of the students towards ethics and professionalism and the development of critical reflection.

The first section of the chapter presents the methodology, describing the detailed qualitative framework using constructivist grounded theory<sup>2</sup> and discourse analysis.<sup>3</sup> Such methods allow for a deep analysis of the student reflective journal texts. The advantage of the theoretical positioning of such a qualitative framework is examined. The characteristics, benefits and applicability of qualitative research methods to the research in this thesis are analysed.

The second section provides a detailed analysis of the empirical process using constructivist grounded theory<sup>4</sup> to show the appropriateness of the site selection, the participants and data selection. This process describes interpreting, coding, categorising and the identification of the themes, constructed from codes and categories. The manner in which the qualitative research is conducted includes detailed and transparent descriptions of the process. Triangulation is used and ethical clearance acknowledged.

The third section of the chapter examines the influences and rationale behind the use of the constructivist grounded theoretical approach of Charmaz, including its staged processes and its application to this research.<sup>5</sup> Coding, category development, memo writing and the construction of the dominant themes form part of the process. The limitations of the approach are outlined and the preference for the approach in conjunction with discourse analysis is also

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<sup>1</sup> Kate Williams et al, *Completing Your PhD* (Palgrave Macmillan, 2011) 9.

<sup>2</sup> Kathy Charmaz, *Constructing Grounded Theory* (Sage 2006); Kathy Charmaz, 'A Constructivist Grounded Theory Analysis of Losing and Regaining a Valued Self' in Frederick Wertz et al (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (Guilford Press, 2011); Kathy Charmaz, 'Grounded Theory Methods in Social Justice Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> edition, 2011).

<sup>3</sup> Martyn Descombe, *The Good Research Guide for Small-Scale Social Research Projects* (Open University Press, 3<sup>rd</sup> ed, 2007) 308; Gunther Kress, *Linguistic Processes in Sociocultural Practice* (Oxford University Press, 1989); Gunther Kress, 'Discourse Analysis and Education: A Multimodal Social Semiotic Approach' in Rebecca Rogers (ed), *Critical Discourse Analysis in Education* (Routledge, 3<sup>rd</sup> ed, 2011).

<sup>4</sup> Charmaz (2006), above n 2.

<sup>5</sup> Ibid.

explained. The fourth section critically evaluates discourse analysis<sup>6</sup> and justifies its application for the analysis of terms of the students' journal texts.

## II RESEARCH: THEORETICAL LOCATION, ADVANTAGES AND APPLICATION

The research involves a detailed analysis and interrogation of foundation law students' reflective journal texts. A social constructivist, poststructural theoretical position informs the research, allowing for multiple perspectives to be taken into account. Poststructural theory closely relates to postmodernism.<sup>7</sup> The approach has been recognised by members of the legal academy, including in Australia and the United States of America.<sup>8</sup> A postmodern position is 'that knowledge and understanding of the world are built up by students through their individual experiences of the world and interpretations of their experiences'.<sup>9</sup> This theoretical position emphasises the importance of learning through real life experiences such as observing legal practice in court, examining the language of law, discourses and legal culture.<sup>10</sup> This position recognises the necessity for active participation in learning, reflection, collaborative teamwork and active participation in the support of the students.<sup>11</sup>

This framework acknowledges how discourses and social practices construct both a representation of experience and a positioning of individuals.<sup>12</sup> Discourses have material effects,<sup>13</sup> which are produced as a result of this positioning.<sup>14</sup> These material effects have the potential to be socially empowering or disempowering.<sup>15</sup> The pedagogical discourses referred to in this research are about teaching in a university context, specifically that of a law school. While notions of the practice of teaching, instruction and training within formal settings such as schools and universities are foremost, pedagogy is also considered in terms of the ways in which individuals learn and are taught to position themselves within the world of legal education.

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<sup>6</sup> Charmaz (2006), above n 3.

<sup>7</sup> Elizabeth Adams St Pierre, 'Post Qualitative Research' in Normann Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> edition, 2011) 615.

<sup>8</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 4; Sophie Sparrow, Gerald Hess and Michael Hunter Schwartz, *Teaching Law by Design for Adjuncts* (Carolina Academic Press, 2010) 5.

<sup>9</sup> Johnstone, above n.

<sup>10</sup> John Seely Brown, Allan Collins and Paul Duguid, 'Situated Cognition and the Culture of Learning' (1989) 18 *Educational Researcher* 34; Sparrow, Hess and Hunter Schwartz, above n 8, 5.

<sup>11</sup> Johnstone, above n 8; Sparrow, Hess and Hunter Schwartz, above n 8, 5-6; Michael Hunter Schwartz, 'Teaching Law by Design: How Learning Theory and Instructional Design can Inform and Reform Law Teaching' (2001) 38 *San Diego Law Review* 381.

<sup>12</sup> Denzin and Lincoln, above n 2, 6, 14.

<sup>13</sup> Ibid 8.

<sup>14</sup> Clifford Christians, 'Ethics and Politics in Qualitative Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> edition, 2011) 74; Charmaz in Denzin and Lincoln, above n 2, 362.

<sup>15</sup> Denzin and Lincoln, above n 2, 12.

<sup>15</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (McGraw Hill, 4<sup>th</sup> ed, 2011).

This framework also recognises that students can move from an understanding that legal knowledge is simply imparted to them, to ways that recognise that their experiences, ideas and developing knowledge are part of a constructed, student-centred perspective.<sup>16</sup> Such a perspective is now an integral part of higher education,<sup>17</sup> which allows one to use what is already known to construct new knowledge.<sup>18</sup> This encourages reflection and critical thinking rather than a passive acceptance of knowledge.<sup>19</sup> The theoretical positioning of the journaling research is informed by a poststructural position, which endorses a postpositivist position.<sup>20</sup> This positioning allows for discovery in the way in which the data is explored, analysed, refined, interpreted and described. A postpositivist perspective draws on ‘phenomenology, which is the belief that our worlds are independent, messy and unique’,<sup>21</sup> therefore the researcher attempts to understand this rather than to uncover a ‘knowable truth’.<sup>22</sup>

### *A Qualitative Research: Characteristics, Benefits and Application to Legal Education Research*

Identification of the multi-faceted nature of qualitative research allows insight into its benefits. Table 1 depicts the way a number of researchers use qualitative research. Qualitative methods have been recommended as highly suitable for legal researchers in law schools.<sup>23</sup>

**TABLE 1: Key Categories and Characteristics of Qualitative Research**

Category	Character	Researcher(s)
Area	Human Sciences Research	Van Manen (1990) <sup>24</sup>
Context	Examination of social, cultural, political, attitudes and values	Hiller (1998) <sup>25</sup> Winckle (2008) <sup>26</sup> Fleming (2010) <sup>27</sup> Denzin and Lincoln (2011) <sup>28</sup>
Settings	Observations of Real Practices; Events; Life Stories; Naturalistic	Knobel and Lankshear (1999) <sup>29</sup> Denzin and Lincoln (2000) <sup>30</sup>
Perspective	Holistic Wholeness	Eisner (1979) <sup>31</sup> Freebody (2003) <sup>32</sup> Descombe (2007) <sup>33</sup>

<sup>16</sup> Biggs and Tang, above n, 8, 9, 22, 326.

<sup>17</sup> Paul Ramsden, *Learning to Teach in Higher Education* (Routledge, 2<sup>nd</sup> ed, 2003); Johnstone, above n 8, 4; Biggs and Tang, above n 15.

<sup>18</sup> Biggs and Tang, above n.

<sup>19</sup> Stella Cottrell, *Critical Thinking Skills-Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011).

<sup>20</sup> Denzin and Lincoln, above n 2, 25, 12.

<sup>21</sup> Kervin et al, *Research for Educators* (Thomson, 2006) 35.

<sup>22</sup> Ibid.

<sup>23</sup> Gerald Hess, ‘Qualitative Research on Legal Education’ (2014) 51 *Alberta Law Review* 925.

<sup>24</sup> Max Van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (SUNY Press, 1990) 3-4.

<sup>25</sup> See, eg, Claire Hiller, *Dis/locating Gendered Readings: Moving Towards a Critical Pedagogy of Estrangement* (PhD Thesis, University of Tasmania, 1998).

<sup>26</sup> See, eg, Joanne Winckle, *Sexual Health Issues in Adolescents: An Examination of the Discourses of Sexuality within Health Education* (PhD Thesis, University of Tasmania, 2008) 55.

<sup>27</sup> See, eg, Aysha Fleming, *Community Resistance to Climate Change: Discourses of Tasmanian Farmers* (PhD Thesis, University of Tasmania, 2010) 81.

<sup>28</sup> Denzin and Lincoln, above n 2, 13.

<sup>29</sup> Michele Knobel and Colin Lankshear, *Ways of Knowing-Researching Literacy* (Primary English Teaching Association, 1999).

<sup>30</sup> Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2<sup>nd</sup> ed, 2000).

<sup>31</sup> Elliott Eisner, ‘Recent Developments in Educational Research affecting Art Education’ (1979) 32 *Art Education* 12.

Category	Character	Researcher(s)
<b>Purpose</b>	To understand social phenomena	Freebody (2003) <sup>34</sup> Kervin et al (2006) <sup>35</sup>
<b>Purpose</b>	To understand meanings and subtleties of meaning	Wainwright (1997) <sup>36</sup> Mertens (1998) <sup>37</sup> Babbie (2005) <sup>38</sup>
<b>Design</b>	Evolves Emergent	Kervin et al (2006) <sup>39</sup> Descombe (2007) <sup>40</sup>
<b>Collection Methods/ Research Strategies</b>	Ethnography; Participant Observation; Action & Applied Research; Grounded Theory; Case Studies; Surveys; Phenomenological; Ethno-methodological; Life History; Historical Method; Clinical Research Design	Knobel and Lankshear (1999) <sup>41</sup> Denzin and Lincoln (2000) <sup>42</sup> Denzin and Lincoln (2011) <sup>43</sup>
<b>Techniques</b>	Observations; Think Aloud; Interviews; Questionnaires; Journalistic; Projective; Artefacts-documents; Records; Data Management Methods; Computer Assisted Analysis; Textual analysis; Visual Methods; Auto and Applied Ethnography	Knobel and Lankshear (1999) <sup>44</sup> Denzin and Lincoln (2000) <sup>45</sup>
<b>Approach</b>	Inductive; Generates theory; Generative	Freebody (2003) <sup>46</sup> Kervin et al (2006) <sup>47</sup>
<b>Tools</b>	Interactive	Kervin et al (2006) <sup>48</sup>
<b>Sample Size</b>	Small Scale	Kervin et al (2006) <sup>49</sup> Descombe (2007) <sup>50</sup>
<b>Data Types</b>	Richness; Complex; Intricacy of Phenomena	Strauss and Corbin (1990) <sup>51</sup> Richards (2005) <sup>52</sup> Babbie (2005) <sup>53</sup>
<b>Analysis</b>	Narrative Description; Descriptive Thick Descriptions; Interpretive; Recognises Contradictions and Inconsistencies	Geertz (1973) <sup>54</sup> Guba and Lincoln (1981) <sup>55</sup> Freebody (2003) <sup>56</sup> Kervin et al (2006) <sup>57</sup> Descombe (2007) <sup>58</sup> Denzin and Lincoln (2011) <sup>59</sup>
<b>Unit of Analysis</b>	Words; Direct Quotations; Visual Images	Descombe (2007) <sup>60</sup>
<b>Theoretical Position</b>	Constructivist; Anti Positivist; Postpositivist; Recognition of Multiple Realities; No set orientation	Lather (1992) <sup>61</sup> Denzin and Lincoln (2000) <sup>62</sup> Freebody (2003) <sup>63</sup> Denzin and Lincoln (2011) <sup>64</sup>

<sup>32</sup> Peter Freebody, *Qualitative Research in Education- Interaction and Practice* (Sage, 2003).

<sup>33</sup> Descombe, above n 3, 249; Winckle, above n 26.

<sup>34</sup> Freebody, above n 32.

<sup>35</sup> Kervin et al, above n 21, 26.

<sup>36</sup> David Wainwright, 'Can Sociological Research be Qualitative, Critical and Valid?' (1997) *The Qualitative Report* 3.

<sup>37</sup> Donna Mertens, *Research Methods in Education and Psychology: Integrating Diversity in Quantitative and Qualitative Approaches* (Sage, 1998).

<sup>38</sup> Earl Babbie (ed), *The Basics of Social Research* (Thomson Wadsworth, 2005).

<sup>39</sup> Kervin et al, above n 21.

<sup>40</sup> Descombe, above n 3, 250.

<sup>41</sup> Knobel and Lankshear, above n 29.

<sup>42</sup> Denzin and Lincoln, above n 30.

<sup>43</sup> Ibid.

<sup>44</sup> Knobel and Lankshear, above n 29.

<sup>45</sup> Denzin and Lincoln, above n 30.

<sup>46</sup> Freebody, above n 32.

<sup>47</sup> Kervin et al, above n 21.

<sup>48</sup> Kervin et al, above n 21; Hiller, above n 25.

<sup>49</sup> Kervin et al, above n 21.

<sup>50</sup> Descombe, above n 3, 289.

<sup>51</sup> Anselm Strauss and Juliet Corbin, *Basics of Qualitative research: Techniques and Procedures for Developing Grounded Theory* (Sage, 1989).

<sup>52</sup> Lyn Richards, *Handling Qualitative Data: A Practical Guide* (Sage, 2005).

<sup>53</sup> Babbie, above n 38.

<sup>54</sup> Clifford Geertz, *The Interpretation of Cultures* (Basic Books, 1973).

<sup>55</sup> Egon Guba and Yvonna Lincoln, *Fourth Generation Evaluation* (Sage, 1998).

<sup>56</sup> Freebody, above n 32.

<sup>57</sup> Kervin et al, above n 21.

<sup>58</sup> Descombe, above n 3; Hiller, above n 25; Winckle, above n 26.

<sup>59</sup> Denzin and Lincoln, above n 2, 5, 8.

<sup>60</sup> Descombe, above n 3, 286, 287; Hiller, above n 25; Winckle, above n 26.

<sup>61</sup> Patti Lather, 'Critical Frames in Educational Research: Feminist and Post-structural Perspectives' (1992) 31 *Theory into Practice* 87.

<sup>62</sup> Denzin and Lincoln, above n 30.

<sup>63</sup> Freebody, above n 32.

Category	Character	Researcher(s)
Flexibility	Organic; Flexible; Allows for Self Corrective Techniques; Multi-method	Howe (1988) <sup>65</sup> Lather (1992) <sup>66</sup> Flick (1998) <sup>67</sup> Denzin and Lincoln (2000) <sup>68</sup> Freebody (2003) <sup>69</sup> Richards (2005) <sup>70</sup>

Table 1 supports the application of a qualitative methodological framework for legal education research. The context is an exploration of the first year law students' social, cultural and political worlds as well their attitudes and values towards ethics, professionalism and critical reflection. The setting involves both inside and outside the legal classroom. Students are required to describe, reflect and analyse their understandings of the legal world, court observations and learning about law both in the classroom and through other experiences. By examining the written text, as a unit of analysis, purpose and meaning is discoverable and helps the researcher understand legal education through students' perspectives. Using the written text of the journals also allows for interpretive analysis of the words and phrases, through coding and categorisation. Detailed analysis is achieved through examination of the rich descriptions contained in the journals. Further constructivist grounded theory allows for theory to be generated rather than tested. This means the initial research questions were used to inform the research rather than specifically answered as a result of the research.

The benefits of qualitative research are outlined in Table 2. A flexible framework<sup>71</sup> for this legal education research includes allowing for choice of theoretical positioning,<sup>72</sup> multiple perspectives to be taken into consideration within legal educational practice<sup>73</sup> and consideration of data and analysis that is grounded in real life educational experiences.<sup>74</sup> The type of small-scale<sup>75</sup> textual data is also suited to<sup>76</sup> recognising pedagogical themes and discourses.<sup>77</sup>

<sup>64</sup> Ibid 12.

<sup>65</sup> Carrollee Howes, *Peer Interaction of Young Children* (1988) 53 *Monographs of the Society for Research in Child Development* 1.

<sup>66</sup> Lather, above n 61.

<sup>67</sup> Uwe Flick, *An Introduction to Qualitative Research* (Sage, 4<sup>th</sup> ed, 2007).

<sup>68</sup> Denzin and Lincoln, above n 30.

<sup>69</sup> Freebody, above n 32.

<sup>70</sup> Richards, above n 52.

<sup>71</sup> Howes, above n 65; Lather, above n 61; Flick, above n 67; Denzin and Lincoln, above n 30; Freebody, above n 32, Richards, above n 52; Liz Sutton, Michael Townend and Jeannie Wright, 'The Experiences of Reflective Learning Journals by Cognitive Behavioural Psychotherapy Student' (2007) 8 *Reflective Practice* 387; Ranjit Kumar, *Research Methodology- A Step by Step Guide for Beginners* (Sage, 2011).

<sup>72</sup> Denzin and Lincoln, above n 30; Martin Haigh, 'Constructing Gaia: Using Journals to Foster Reflective Learning' (2001) 25 *Journal of Geography in Higher Education* 167; Frederick King and Diana LaRocco, 'E-Journaling: A Strategy to Support Student Reflection and Understanding' (2006) 9 *Current Issues in Education* <<http://cie.ed.asu.edu/volume9/number4/>>.

<sup>73</sup> Hiller, above n 25; Knobel and Lankshear, above n 29; Denzin and Lincoln, above n 30; Freebody, above n 32.

<sup>74</sup> Kervin et al, above n 21; Descombe, above n 3.

<sup>75</sup> Strauss and Corbin, above n 51; Babbie, above n 38; Richards, above n 52; Descombe, above n 3; Anne Hume, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 *Higher Education & Research Development* 247.

**TABLE 2: Benefits of Qualitative Research**

<b>Benefit(s)</b>	<b>Researcher(s)</b>
<b>1. Provides a flexible and adaptable research framework</b>	Howe (1988) <sup>78</sup> Lather (1992) <sup>79</sup> Flick (1998) <sup>80</sup> Denzin and Lincoln (2000) <sup>81</sup> Freebody (2003) <sup>82</sup> Richards (2005) <sup>83</sup> Sutton, Townend and Wright (2007) <sup>84</sup> Kumar (2011) <sup>85</sup>
<b>2. Allows for choice with theoretical positioning</b>	Denzin and Lincoln (2000) <sup>86</sup> Haigh (2001) <sup>87</sup> King and LaRocco (2006) <sup>88</sup>
<b>3. Suits a variety, selection and or combination of research techniques and data collection methods</b>	Knobel and Lankshear (1999) <sup>89</sup> Denzin and Lincoln (2000) <sup>90</sup> Dyment and O'Connell (2003) <sup>91</sup> Kumar (2011) <sup>92</sup>
<b>4. Recognises multiple perspectives (including pedagogical perspectives)</b>	Hiller (1998) <sup>93</sup> Hume (2009) <sup>94</sup> Knobel and Lankshear (1999) <sup>95</sup> Denzin and Lincoln (2000) <sup>96</sup>
<b>5. Considers the context, language, cultural features; Data and Analysis are grounded in real life lived experiences</b>	Kervin et al (2006) <sup>97</sup> Wright (2005) <sup>98</sup> Descombe (2007) <sup>99</sup>
<b>6. Enables analysis and interpretations through narrative descriptions</b>	Denzin and Lincoln (2000) <sup>100</sup> O'Leary (2010) <sup>101</sup> Kumar (2011) <sup>102</sup>
<b>7. Suitable for rich, complex, detailed and/or intricate data</b>	Strauss and Corbin (1990) <sup>103</sup> Babbie (2005) <sup>104</sup> Richards (2005) <sup>105</sup> Descombe (2007) <sup>106</sup>

<sup>76</sup> Denzin and Lincoln, above n 30; Zina O'Leary, *The Essential Guide to Doing Your Research Project* (Sage, 2010); Kumar, above n 71, Jeannie Wright, 'A Discussion with Myself on Paper: Counselling and Psychotherapy Students' Perceptions of Keeping a Learning Log' (2005) *Reflective Practice* 507.

<sup>77</sup> Kervin et al, above n 21; Freebody above n 32; S Taylor and R Bogden, *Introduction to Qualitative Research Methods: the Search for Meaning* (Wiley, 1984).

<sup>78</sup> Howes, above n 65.

<sup>79</sup> Lather, above n 61.

<sup>80</sup> Flick, above n 67.

<sup>81</sup> Denzin and Lincoln, above n 30.

<sup>82</sup> Freebody, above n 32.

<sup>83</sup> Richards, above n 52.

<sup>84</sup> Sutton, Townend and Wright, above n 71.

<sup>85</sup> Kumar, above n 71.

<sup>86</sup> Denzin and Lincoln, above n 30.

<sup>87</sup> Haigh, above n 72.

<sup>88</sup> King and LaRocco, above n 72.

<sup>89</sup> Knobel and Lankshear, above n 29.

<sup>90</sup> Denzin and Lincoln, above n 30.

<sup>91</sup> Janet Dyment and Timothy O'Connell ' "Journal Writing is Something We have to Learn on Our Own"-The Results of a Focus Group Discussion with Recreation Students' (2003) 18 *Schole: A Journal of Leisure Studies and Recreational Education* 23.

<sup>92</sup> Kumar, above n 71.

<sup>93</sup> Hiller, above n 25.

<sup>94</sup> Hume, above n 75.

<sup>95</sup> Knobel and Lankshear, above n 29.

<sup>96</sup> Denzin and Lincoln, above n 30.

<sup>97</sup> Kervin et al, above n 21.

<sup>98</sup> Wright, above n 76.

<sup>99</sup> Descombe, above n 3.

<sup>100</sup> Denzin and Lincoln, above n 30.

<sup>101</sup> O'Leary, above n 76.

<sup>102</sup> Kumar, above n 71.

<sup>103</sup> Strauss and Corbin, above n 51.

<sup>104</sup> Babbie, above n 38.



Category	Character	Researcher(s)
8. Allows for meaning to be derived from interaction		Dyment and O'Connell (2003) <sup>107</sup>
9. Fit for small scale studies		Kervin et al (2006) <sup>108</sup> Kumar (2011) <sup>109</sup> Descombe (1998) <sup>110</sup>
10. Recognises evolvement, emergence and generation of themes (rare/new themes) and discourses		Taylor and Bogden (1984) <sup>111</sup> Descombe (1998) <sup>112</sup> Freebody (2003) <sup>113</sup> Kervin et al (2006) <sup>114</sup>
11. Can be used in conjunction with quantitative methodologies (confirming findings of other approaches, a starting point for other approaches and to complement other approaches)		Kervin et al (2006) <sup>115</sup> Hammersley (1996) <sup>116</sup>
12. Develops powerful educational practices		Freebody (2003) <sup>117</sup>

### III CONSTRUCTIVIST GROUNDED THEORY: APPLICATION TO RESEARCH IN LEGAL EDUCATION

Constructivist grounded theory provides a flexible process that allows for revision and reframing, particularly in light of emerging unpredictable, new themes, patterns and developing themes.<sup>118</sup> A social constructivist position in this study is taken,<sup>119</sup> allowing for and encouraging a more student-centred orientation in legal education. The scope for using a variety of different research techniques and data collection methods<sup>120</sup> strengthens credibility. This research uses the collection of data in the form of students' journals and is informed by research publications. The use of pre-existing documents allows the researcher to access easily the material. Once the data collection is completed, the processes of analysis, refining and writing take place.<sup>121</sup> This type of study has not been undertaken within the context of Australian legal education before.

Constructivist grounded theory is a rigorous process,<sup>122</sup> which allows for meanings to be generated through thick, rich descriptions evident in the law journal texts. This enables interpretation and analysis that may not be possible with other forms of research. The journal

<sup>105</sup> Richards, above n 52.

<sup>106</sup> Descombe, above n 3, 313.

<sup>107</sup> Dyment and O'Connell, above n 91.

<sup>108</sup> Kervin et al, above n 21; Winckle, above n 26.

<sup>109</sup> Kumar, above n 71.

<sup>110</sup> Descombe, above n 3.

<sup>111</sup> Taylor and Bogden, above n 77.

<sup>112</sup> Descombe, above n 3.

<sup>113</sup> Freebody, above n 32.

<sup>114</sup> Kervin et al, above n 21.

<sup>115</sup> Ibid.

<sup>116</sup> Martyn Hammersley, 'The Relationship between Qualitative and Quantitative Research: Paradigm versus Methodological Eclecticism' in John Richardson (ed), *Handbook of Qualitative Research Methods for Psychology and the Social Sciences* (Wiley-Blackwell, 1996).

<sup>117</sup> Freebody, above n 32.

<sup>118</sup> Above n 2; Chapter 7 I-VI.

<sup>119</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 4, 1.7.

<sup>120</sup> Above n 2; Chapter 7 I-VI.

<sup>121</sup> Above n 120.

<sup>122</sup> Charmaz (2006), above n 2.

texts can be complex and rich containing multiple themes, perspectives, opinions, judgments and feelings.<sup>123</sup> Development of ethics, professionalism and critical reflection are central to the research topic. They involve behaviours and values, which are inherently complex with multiple meanings.<sup>124</sup> Using constructivist grounded theory<sup>125</sup> requires the researcher to undertake a repeated process of reading, re-reading and thinking carefully about the data. The intense process of coding requires the journals to be thoroughly scrutinised for meaning.

In this research constructivist grounded theory<sup>126</sup> has been used in the interrogation of students' reflective journals from two cohorts. The research is informed by the findings of a literature review on critical reflection and a multidisciplinary study of journaling.<sup>127</sup> The findings emerge from use of the quantitative technique of coding and a variety of different qualitative techniques, memo writing, categorising and development of the dominant themes, informed by the researcher/educator's experience.

Qualitative methodologies are also methodologically sound for small-scale studies.<sup>128</sup> Researchers are able to analyse small group dynamics<sup>129</sup> holistically,<sup>130</sup> in a social and cultural context<sup>131</sup> from the inside, which is less likely to be achieved in larger scale studies.<sup>132</sup> In this study participants are foundation law students, namely 32 LAW121 law students from 2009 and 77 LAW121 law students from 2011. The study is accordingly small-scale but by no means insignificant.<sup>133</sup> The students are from a number of regions around Tasmania, including Hobart, Launceston and the Cradle Coast campuses. This also makes the research more representative than student data from one campus.

The research provides for transformation of educational practices within law schools at universities.<sup>134</sup> As reflective journaling is not traditionally part of legal pedagogy, examination of the benefits of journaling allows for diversification in the legal pedagogy. The research records some of the life experiences of groups<sup>135</sup> of foundation law students in LAW 121 at the UTAS in 2009 and 2011. The research gives insights about how the student cohorts

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<sup>123</sup> Table 1.

<sup>124</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 437-465.

<sup>125</sup> Above n 2.

<sup>126</sup> Ibid.

<sup>127</sup> Chapter 4; Chapter 5.

<sup>128</sup> Maria Gomez and Marjo Kuronen, 'Comparing Local Strategies and Practices: Recollections from Two Qualitative Cross National Research Projects' (2011) 11 *Qualitative Research* 683; Jennifer Mason, 'Mixing Methods in a Qualitatively Driven Way' (2006) 6 *Qualitative Research* 9; J Platt, 'What Can Case Studies Do?' in Robert Burgess, *Studies in Qualitative Methodology* (JAI Press, 1988).

<sup>129</sup> Mason, above n 128.

<sup>130</sup> Platt, above n 128.

<sup>131</sup> Gomez and Kuronen, above n 128.

<sup>132</sup> Ibid.

<sup>133</sup> Table 1.

<sup>134</sup> Ibid.

<sup>135</sup> Charmaz (2006), above n 2, 21.

make sense of the legal world, the course and their own learning. It observes and describes how they discuss, identify, evaluate, analyse and on reflect aspects of legal practice, the course and their own learning.

The research interrogates the writing of the 2009 and 2011 cohorts. The data selected is the journal text, which allows the researcher to read and discover more about the students' world from the students' first person perspective. Constructivist grounded theory is used to make meaning and derive hypotheses from those meanings. The approach has been adopted in this context as the researcher takes the view that it is the best way to begin 'to understand some of the beliefs and motivations'<sup>136</sup> of the students. Students' examine grapple with the values, ethics and behaviour required in the legal profession.<sup>137</sup>

A goal of the research is to make sense of the insider's analysis of these law students' perspectives, through the researcher's interpretation and description of the data. The method involves reading and re-reading the data, interpreting and re-interpreting the data and describing the data in terms of common patterns. The authenticity of the research is demonstrated through the dual role of the researcher as both observer and an object of inquiry, as a legal educator of the student participants.<sup>138</sup> Constructivist grounded theory acknowledges the 'researcher as having a direct effect on the research design, the findings and the interpretation of a study'.<sup>139</sup> Researchers can be regarded as part of the research as the data collection includes instruments valued by the researcher, which include the values, assumptions, beliefs and knowledge, which inform the data collection and reporting.<sup>140</sup> The researcher here has significant connections with the group such that the interpretations of the legal world should not be as seen in stark contrast to that of the student. The researcher formed part of a similar student cohort, was taught by the same LAW121 educator at the same University and has been the teacher of the LAW121 subject for 13 years.

External reliability is defined as 'the extent to which independent researchers working in the same or similar context would obtain similar results'.<sup>141</sup> In this case the research is preliminary in being the first of its kind in this area. Further research is necessary to enhance external reliability. Internal reliability is maintained with matching themes and patterns, comparing and contrasting aspects of the journal texts from 2009 and 2011. Further, the goal of constructivist grounded theory relies on the research constructing multiple contrasting and

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<sup>136</sup> Denzin and Lincoln, above n 2, 456.

<sup>137</sup> O'Leary, above n 76, 116.

<sup>138</sup> Freebody, above n 32, 76.

<sup>139</sup> Knobel and Lankshear, above n 29, 88 compare this approach to other approaches, which insist on research objectivity so that studies can be replicated and are reliable.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

contradictory meanings, generated by research data.<sup>142</sup> Considerations of validity and reliability can be excluded in favour of more general verifications such as whether or not the study is credible and transparent.<sup>143</sup> Further, constructivist grounded theory recognises that the analysis is influenced by preconceived notions of the researcher.<sup>144</sup> This research examines the way law students tell the story of their own learning and understandings of aspects of legal education through their journaling. The credibility and transparency of the research is developed through the detailed explanations of the methodology.<sup>145</sup>

#### IV PARTICIPANTS, SITE SELECTION, DATA, ETHICAL CLEARANCE AND DATA COLLECTION

Foundation university law students at UTAS were the target of this research and were selected in view of the relevance of the subject area and researcher's teaching connection with the students. Two cohorts of student participants were chosen from 2009 and 2011 in LAW 121. The primary data for the research was selected from the first person reflective journal texts of those law students. These journaling texts represented ten percent of the weighting of the assessment for the course and were submitted at the end of semester. The students were required to submit a journal of at least seven pages containing reflections about their own learning, engagement and courtroom experiences.

Students were contacted by email and, in line with research ethics requirements, needed to opt into the research. Thirty-two 2009 foundation year law students from the Law Faculty campus in Hobart participated in the research. Seventy-seven 2011 student participants came from one of three campuses either located at Hobart,<sup>146</sup> Launceston<sup>147</sup> or the Cradle Course Campus.<sup>148</sup> The 2009 and 2011 cohorts were chosen because the level of guidance from educators increased in 2011. Positive adjustments were made to the teaching of the reflective journaling in 2011 as a result of the initial research undertaken in this thesis.

##### *A Ethical Clearance for the Research*<sup>149</sup>

Ethics clearance for the research on the journals was secured early in the research process.<sup>150</sup> In the application for ethical clearance the researcher sought passive consent from the

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<sup>142</sup> Knobel and Lankshear, above n 29, 89.

<sup>143</sup> Ibid.

<sup>144</sup> O'Leary, above n 76, 270-271.

<sup>145</sup> Chapter 6 I-IX; Chapter 7 I-VI; Chapter 8 I-XI.

<sup>146</sup> N=67.

<sup>147</sup> N=3.

<sup>148</sup> N=7.

<sup>149</sup> University of Tasmania, *Integrity and Ethics* (2013) <<http://www.utas.edu.au/research/graduate-research/current/graduate-survival-kit>>.

<sup>150</sup> Final ethics approval for the PhD research was granted from the UTAS Human Research Ethics Committee (Tasmania) Network on the 30th May 2011 (Reference H0011641).

University Ethics Committee. The ethics application proposed that students be contacted by email, explaining the nature of the research, how their journals would be used without identifying their names and that passive consent would be assumed if they did not respond. Passive consent was sought to enhance participation levels. Ethics approval, but only for active consent via return email, was granted on the 30<sup>th</sup> May 2011.

*B Data Collection: Journal Texts and the Differences between Course Delivery for 2009 and 2011 Cohorts*

Once ethics clearance and student consent were obtained, the primary data was collected in the form of student reflective journal texts from both cohorts of students. Each student completed one journal. For the 2009 cohort, the journals were de-identified, photocopied in full and given numbers from Journal 1 to Journal 32 respectively. The data was stored safely and retrieved when the researcher undertook the analysis. In the second half of 2011, the journals were likewise de-identified, photocopied and allocated numbers (here from Journal 1 to Journal 77 respectively). These journals were similarly safely stored and used during the interpretation and analysis phases of the research.

The role of the researcher formed part of the data collection process in the reading, interpreting, analysis and reporting of the data. In this case the connection between the Cradle Coast campus students and the researcher was that of lecturer and students. Hobart and Launceston students were not taught by the researcher but by other legal educators taking the same course. Memo writing was also part of the data and thus the data collection process. The participant researchers' memo writing was used to supplement the primary data, with significant experiences of the researcher becoming part of the data collection process.

There were some differences between the foundation law course delivery in 2009 and 2011 but both cohorts completed journals as part of the overall assessment for the course. In 2009, LAW121 in Hobart was delivered by face-to-face lecturing, aided by PowerPoint lecture slides and tutorials by law lecturers and tutors. Students were also linked to the on-line site My Learning Online (MyLo), a learning management system, which provides the course outline, visual and audio transcripts of lecture notes, tutorial problems, newsletters, announcements, links to law news and samples of past students' work. In Hobart, the course coordinator delivered most of the lectures, with the remaining lectures taken by guest lecturers and a lecturer who delivered alternate dispute resolution classes. Three different law tutors conducted tutorials in small groups each week.

In Launceston the same lecturer and tutor taught the Launceston LAW121 students, with

some guest lecturing. At the Cradle Coast campus, the researcher delivered most of the lectures, with some guest lecturers and took all tutorials. Students were required to visit Tasmanian Courts and asked to write a journal about their court experiences. The 2009 cohort were given minimal instruction about how to write the journal. They were given written guidelines in the course outline, an article suggesting journal topics and access to sample journals from previous years. These students were not given a written guide to journaling. The 2011 students were given significantly more instruction and guidance, as a result of the literature reviews and preliminary analysis of the 2009 data. The particulars of the written guide students were given are listed in Table 3 and a copy of the guide is attached in an Appendix.<sup>151</sup>

**TABLE 3: Journaling Guidance for 2011 Students**

Provision of a guide to journaling containing the following information
1. The difference between private journaling and journaling for academic purposes
2. The purpose of journaling for the course
3. Helping yourself learn
4. Trying a different style of writing
5. Developing reflective skills needed for personal and professional development
6. Pedagogy recommended by the Council of Australian Law Deans
7. Tips for journaling
8. Writing
9. Finding the time to journal
10. What material to include
11. Reflecting
12. Links between theory and practice
13. Putting in effort
14. Finding examples of other work
15. Learning and experiential learning
16. Common questions
17. Be aware of traps or problems
18. Guide for court attendance
19. Questions to help with journaling
20. Criteria sheets
21. Examples of reflective writing
22. Selected reference list

The 2009 students were given feedback, via a guide, which detailed the various standards of reflection<sup>152</sup> including reflection-in-action, reflection-on-action, reflection-on-reflection, demonstration of progressive learning through critical reflection, reflection on the course and on court visits. By contrast, 2011 students were given a detailed criteria rubric, which assessed not merely reflection but also how the students evaluated ethics, professionalism and their own learning.<sup>153</sup> Students were supplied the rubric prior to the assessment, with assessors providing feedback after the assessment. They were also afforded opportunities to practice reflection and reflective writing throughout the course in tutorials. An early assessed

<sup>151</sup> See Appendix 1.

<sup>152</sup> Standards included minimal, low, medium, above average, good and exceptional.

<sup>153</sup> See Appendix 2.

court reflective exercise was issued to assist with practising reflective writing. Feedback was given on this exercise and to assist with completing the final reflective journal.<sup>154</sup>

## V TRIANGULATION: TRANSPARENCY WITH PROCESS

Qualitative research has limitations relating to reliability, generalisability and validity.<sup>155</sup> Reliability relates to consistency<sup>156</sup> whereas generalisability relates to the ability to transfer the findings of particular research to other contexts,<sup>157</sup> including replication of the method. Validity is defined as requiring 'large-scale research'<sup>158</sup> and 'statistical measures of reliability'.<sup>159</sup> One solution to enhance the validity of small-scale qualitative research is triangulation, the practice of reviewing phenomena from more than one perspective.<sup>160</sup> Triangulation permits other methods to be used for authenticity, including other studies and literature reviews. Literature reviews in the areas of ethics, professionalism, journaling, critical reflection and legal pedagogy are included in this research. The initial literature reviews were conducted prior to the qualitative research and then updated after the discourse analysis was completed. The researcher was the only coder of the data in this research, thereby making it reliable in terms of consistency of coding. Generalisability of the research is arguable in that similar groups of foundation law students are part of the research and the same researcher is involved in the interpretation of the data. The detailed analytic methods of constructivist grounded theory, overt explanation and triangulation enhance the study by providing a number of clear and transparent methods of analysis.

## VI CONSTRUCTIVIST GROUNDED THEORY: DEVELOPMENT AND USE

Grounded theory is derived from the work of sociologists Glaser and Strauss.<sup>161</sup> Two main divergent views emerge from their work on the direction of grounded theory's methodological framework.<sup>162</sup> Glaser's view has been interpreted as the researcher independent from the research, with meanings evolving inductively. Strauss and Corbin, and later Charmaz, have given researchers more integrative roles as interpreters.<sup>163</sup> Charmaz takes a broad view that researchers can use the strategies of constructivist grounded theory flexibly.<sup>164</sup> In this research the researcher has deliberately used the flexibility of Charmaz's

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<sup>154</sup> Ibid.

<sup>155</sup> Kervin et al, above n 21, 37.

<sup>156</sup> Richards, above n 52, 99.

<sup>157</sup> Kervin et al, above n 21, 22.

<sup>158</sup> Richards, above n 52, 192.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid 134-135.

<sup>161</sup> Barney Glaser and Anselm Strauss, *The Discovery of Grounded Theory* (Sociology Press, 1967).

<sup>162</sup> Descombe, above n 3, 102.

<sup>163</sup> Ibid.

<sup>164</sup> Charmaz (2006), above n 2.

constructivist grounded theoretical position.<sup>165</sup> Different meanings can be generated for a more complex analysis<sup>166</sup> but the theory usually involves the components described in Table 4. The advantages of this type of analysis are further outlined in Table 5.

**TABLE 4: Components of a Constructivist Grounded Theoretical Approach**

No.	Common Components of Constructivist Grounded Theory
1.	Emphasising the importance of field work, real settings and /or aspects of social life <sup>167</sup>
2.	Choice from diverse data collection materials including interviews, transcripts of meetings, court proceedings, diaries, letters, questionnaire, census answers <sup>168</sup> and memo-writing <sup>169</sup>
3.	Seeking to discover and analyse patterns, common categories and themes from the data <sup>170</sup>
4.	Use of coding, categorising and themes with or without discourses analysis <sup>171</sup>
5.	Linking explanations very closely to the real world with emphasis on 'what is' <sup>172</sup>
6.	Refining interpretations <sup>173</sup>
7.	Comparing and contrasting variables from the collected data <sup>174</sup>
8.	Leaving literature reviews to a later stage in the process given that theories are not yet developed <sup>175</sup>
9.	Rejects objectivity <sup>176</sup>
10.	Locates the researcher generalisations <sup>177</sup>
11.	Considers both the researchers and participants standpoints <sup>178</sup>
12.	Emphasises reflexivity <sup>179</sup>
13.	Adopts sensitised concepts <sup>180</sup>
14.	Remains alert to variation and differences <sup>181</sup>

**TABLE 5: Advantages of Constructivist Grounded Theory**

No.	Advantages of Constructivist Grounded Theory
1.	Small scale studies with low budgets <sup>182</sup>
2.	Areas where human action is emphasized e.g. Business, health, education <sup>183</sup> (including higher education) <sup>184</sup>
3.	Interpreting data that is rich, complex and possibly ambiguous with meaning <sup>185</sup>
4.	Various forms of careful scrutiny of the data including computer software analysis <sup>186</sup>
5.	Consideration of both researchers' and participants' generalisations and standpoints <sup>187</sup>
6.	Flexible according to the researchers needs <sup>188</sup>
7.	Rigorous via the set processes of coding, categories and themes <sup>189</sup>

<sup>165</sup> Ibid.

<sup>166</sup> Descombe, above n 3.

<sup>167</sup> Ibid 95.

<sup>168</sup> Descombe, above 3, 93.

<sup>169</sup> Charmaz (2006), above n 2.

<sup>170</sup> Babbie, above n 38, 53; Descombe, above n 3, 3.

<sup>171</sup> Above n 170.

<sup>172</sup> Descombe, above n 3, 3.

<sup>173</sup> Babbie, above n 38, 306.

<sup>174</sup> Descombe, above n 3, 99.

<sup>175</sup> Charmaz (2006), above n 2, 169.

<sup>176</sup> Charmaz in Denzin and Lincoln, above n 2, 360.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Descombe, above n 3, 93.

<sup>183</sup> Ibid.

<sup>184</sup> Babbie, above n 38, 305.

<sup>185</sup> Descombe, above n 3, 3.

<sup>186</sup> Ibid 98.

<sup>187</sup> Charmaz (2006), above n 2.

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.



Charmaz, who has been described as ‘one of the leaders in the field of grounded theory’,<sup>190</sup> argues that this approach has potential in relation issues of social justice.<sup>191</sup> It has been used to examine social justice issues of ‘inequalities and equality, barriers and access, poverty and privilege, individual rights and the collective good and their implications for suffering’.<sup>192</sup> Her view supports the application of constructivist grounded theory to the development of the dominant themes, which emerged from the reflective journals of the law students. Prosecutors have also used the approach in the legal context in court and treatment of victims,<sup>193</sup> included in Table 6.

**TABLE 6: Constructivist Grounded Theory in Multi-Disciplinary Studies**

Discipline	Context	Researcher
<b>Education</b>	Classroom (Primary School & High School) Classroom (High School)	Hiller (1998) <sup>194</sup> Winckle (2008) <sup>195</sup>
<b>Education</b>	Farmers	Fleming (2010) <sup>196</sup>
<b>Social Sciences &amp; Nursing Social/Behavioural Sciences/Arts/</b>	Medical patients (including those with HIV or cancer); Children with disabilities; Victims of bullying; Homeless people; Immigrants Women; Ethnic minorities	Charmaz (2011) <sup>197</sup>
<b>Social Sciences</b>	Sexual Assault Victims	McPhail and Di Nitto (2005) <sup>198</sup> Frohmann (1998) <sup>199</sup>
<b>Law</b>	Insanity; Substance Use Dealt with in Court	Thom et al (2012) <sup>200</sup>

Charmaz presents a detailed, comprehensive and transparent methodology for constructivist grounded theory.<sup>201</sup> Her methodology provides clear explanations for interpretation of data. It includes scrupulous data collection, refined coding processes and categorisation together with comparative analysis of findings of the research. The effectiveness of the method for this research is detailed in each section below.

<sup>190</sup> Flick, above n 67, 316.

<sup>191</sup> Charmaz in Denzin and Lincoln, above n 2 359.

<sup>192</sup> Ibid.

<sup>193</sup> Katey Thom, Mary Finlayson and Brian McKenna, ‘Insanity, methamphetamine and psychiatric expertise in the New Zealand courtrooms’ (2011) 18 *Journal of Law and Medicine* 749.

<sup>194</sup> Hiller, above n 25.

<sup>195</sup> Winckle, above n 26.

<sup>196</sup> Fleming, above n 27.

<sup>197</sup> Charmaz in Denzin and Lincoln, above n 2, 359-380.

<sup>198</sup> Beverley McPhail and Diana M DiNitto, ‘Prosecutorial Perspectives on Gender Bias Hate Crimes’ (2005) 11 *Violence Against Women* 1162.

<sup>199</sup> Lisa Frohmann, ‘Constituting Power in Sexual Assault Cases: Prosecutorial Strategies for Victim Management’ (1998) 45 *Social Problems* 393.

<sup>200</sup> Thom, Findlayson and McKenna, above n 193.

<sup>201</sup> Charmaz in Denzin and Lincoln, above n 2.

### *A Data Collection: The Reflective Journal Text*

The research process begins with gathering rich, thick, minute, detailed<sup>202</sup> and descriptive data.<sup>203</sup> The students' journals provide an elicited text of rich data to be coded using a constructivist grounded theory approach.<sup>204</sup> While common qualitative data is interview or survey data, the journal can be a substitute for interview data.<sup>205</sup> The method of writing allows students to spend much more time considering carefully how they construct their world, with the time consuming nature of the task well documented in the research.<sup>206</sup> Charmaz maintains for the data to work best, the participants need to have a stake in the addressed topics and view the questions as significant.<sup>207</sup> In this research, that fact that the journal texts have been assessed gives the participants a stake in the addressed topics and renders the questions significant.

### *B Coding Processes*<sup>208</sup>

Coding is the process of defining what the data is about using the research questions to interrogate the data.<sup>209</sup> After reading the text, interrogating the data and thinking about the data the researcher may develop new perspectives.<sup>210</sup> Coding a text or lived experience thematically by interpreting its meaning is a process of constructing meaning.<sup>211</sup> Coding has analytic power in that can lead to innovative analysis 'can raise questions of power and connection with larger social units'.<sup>212</sup> Naming each line of the written data,<sup>213</sup> which is called line-by-line coding, is the first step in coding.<sup>214</sup> This method facilitates the discovery of ideas<sup>215</sup> and the potential development of 'vivid meanings'.<sup>216</sup>

Researchers are enabled to make detailed observations of actions and nuances of the written texts. Flexible strategies<sup>217</sup> and helpful questions<sup>218</sup> are used to guide the researcher with

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<sup>202</sup> See, eg, Hiller, above n 25.

<sup>203</sup> Charmaz in Normann Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2<sup>nd</sup> ed, 2000) 514.

<sup>204</sup> Charmaz (2006), above n 2, 36.

<sup>205</sup> Charmaz, above n 2, 35.

<sup>206</sup> See, eg, Terry Hutchinson and Natalie Cuffe, 'Legal Research Project Management: Skills Extensions for Upper Level Law Students' (2004) 38 *Law Teacher* 159; Anne Hume, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 *Higher Education Research and Development* 247; Martin Haigh, 'Constructing Gaia: Using Journals to Foster Reflective Learning' (2001) 25 *Journal of Geography in Higher Education* 167; Monica Kennison and Shirley Misselwitz, 'Evaluating Reflective Writing for Appropriateness, Fairness and Consistency' (2002) *Nursing Education Perspectives* 238.

<sup>207</sup> Charmaz, above n 2, 37.

<sup>208</sup> *Ibid* 45.

<sup>209</sup> *Ibid* 43.

<sup>210</sup> Denzin and Lincoln, above n 203, 515.

<sup>211</sup> Van Manen, above n 25.

<sup>212</sup> Charmaz in Denzin and Lincoln, above n 2, 363.

<sup>213</sup> *Ibid* 50.

<sup>214</sup> Charmaz (2006), above n 2, 43.

<sup>215</sup> *Ibid*.

<sup>216</sup> *Ibid*.

<sup>217</sup> *Ibid*.

coding.<sup>219</sup> Action codes are developed to compare people, events and incidents.<sup>220</sup> Once line-by-line coding takes place, the data can then be formed into initial codes. This process allows for the researcher to document some of the main ideas coming from the data. The initial codes derived from the data are then listed as numbers to be tabled, refined and further examined. A careful analysis then takes place for evidence of the initial codes within the text of each journal. The numbers of initial codes in the data are collected and refined further. Each time the data is re-read it allows the opportunity to reflect on whether the initial codes are representative of the data. If they are not representative of the data, the names of the codes are altered. Once the codes are developed and the frequency of the initial codes completed, this process has reached saturation and is ready for categorisation.

### *C Categorisation*

Upon the initial codes being identified, they are applied to the data, counted and from this process the categories are developed.<sup>221</sup> The categories reveal the patterns, which are constructed from the initial coding process.<sup>222</sup> The codes are examined for similarities and differences.<sup>223</sup> Where there are similarities, the codes are subsumed into the same category. Where there are distinct differences, the codes are subsumed into different categories. The process of highlighting similarities and differences promotes more refined categories.<sup>224</sup> A very low frequency of initial codes makes it important to re-examine the data carefully. It may indicate the phenomena is less important to the research, or it may still be worthy of significant consideration if it relevant to the research. The relevance can be gleaned from the interpretation of the researcher as well as the nature and topic of the research.

### *D Memo Writing*

Memo writing assists with the process of developing codes. Memo writing also assists with the iterative process.<sup>225</sup> The process of keeping recordings of findings contemporaneously with the coding process adds to the veracity of the processes. Memo writing is used to explore different ways of ideas for developing the categories. In this research memos were written about the data. Memo writing was undertaken in a number of stages by the researcher. The researcher first reflected about the reasons for the research, which was followed by an examination of the structure of the course.

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<sup>218</sup> Ibid 53.

<sup>219</sup> Ibid 43.

<sup>220</sup> Charmaz in Denzin and Lincoln, above n 2, 367-368; Hiller, above n 25.

<sup>221</sup> Kervin et al, above n 21, Glossary for Coding.

<sup>222</sup> See, eg, Richards, above n 52, 108-116.

<sup>223</sup> Descombe, above n 3.

<sup>224</sup> Ibid 99.

<sup>225</sup> Charmaz (2006), above n 2.

### E Development of Themes

The final stage of constructivist grounded theory involves comparing the analysis within the first four stages of the process.<sup>226</sup> From the categories the dominant themes are developed. These themes are reconstructed into the dominant discourses, which emerged from the primary data.

### VIII DISCOURSE ANALYSIS: DEVELOPING BROADER CONTEXTUAL MEANINGS

Discourse analysis can have significant differences in terms of dimensions, including epistemological, theoretical, contextual positioning, data typology and claims.<sup>227</sup> This thesis takes a social constructivist epistemological orientation where discourse analysis is focal, given the central role language has in the social world.<sup>228</sup> According to Burr, social constructivists can have familiar traits including:<sup>229</sup>

- 1) Historical and cultural specificity.<sup>230</sup> Categories and concepts are historically and culturally specific and therefore may change overtime.<sup>231</sup>
- 2) Knowledge is sustained by social process, and common ways to understand the world include looking at the daily interactions between people in social life.<sup>232</sup>
- 3) Language a central role in understandings and a form social interaction.<sup>233</sup>
- 4) Interaction as a focus of inquiry.<sup>234</sup>

Constructivist grounded theory has the tendency to divorce the explanation from the broader context.<sup>235</sup> In this research this limitation was avoided by expanding the analysis into a broader discourse analysis. A discourse can be defined as ‘a set of meanings, metaphors, representations, images, stories, statements and so on that in some way piece together a particular version of events’.<sup>236</sup> Discourse analysis can ‘mean a variety of things’,<sup>237</sup> including the way in which texts, talk and practice constitute the social world.<sup>238</sup> Discourse analysis

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<sup>226</sup> Ibid.

<sup>227</sup> Linda Wood and Rolf Kroger, *Doing Discourse Analysis: Methods for Studying Action in Talk and Text* (Sage, 2000) 18.

<sup>228</sup> Vivian Burr, *Social Constructivism* (Routledge, 2<sup>nd</sup> ed, 2003) 7.

<sup>229</sup> Ibid 2.

<sup>230</sup> Ibid 4.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid 7.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid 105.

<sup>236</sup> Burr, above n 228, 64.

<sup>237</sup> Jennifer Mason, *Qualitative Research* (Sage, 2002) 57.

<sup>238</sup> Ibid.

focuses on the implicit meaning of the text or image rather than the explicit content.<sup>239</sup> Developed by postmodern/poststructuralist theory, it involves deconstruction of the data in order to examine how the texts work, to create or sustain particular aspects of social life.<sup>240</sup>

A discourse analysis aims to unpack the text or image in order to reveal what people are seeking to do through the talk, text or image and what background assumptions are needed in order for this to be achieved.<sup>241</sup> The data in this research is analysed to reveal how it creates meaning, contains hidden messages, reflects, generates and reinforces cultural messages. It intimately involves the reader as an active participant in interpreting the data.<sup>242</sup>

Discourse is central to Foucault's writing, in areas that have a specialised knowledge or specialised vocabulary.<sup>243</sup> This thesis takes the position that both law and legal education are areas of specialist knowledge. It suggests that power and knowledge are intimately connected. This theoretical framework is highly appropriate given that the importance of a more focused approach in legal education on specialist skills and legal knowledge is now recognised.<sup>244</sup> This thesis takes the position that texts and interpretation of the texts form part of the social world. The contextual positioning acknowledges the background of the student participants as foundation law students with limited legal backgrounds and legal knowledge.

#### *A Discourse Analysis: Advantages and Limitations*

Discourse analysis allows for interpreting how power and ideology operate through language in social settings.<sup>245</sup> Such an analysis of the language of texts also enables 'nuanced insights relating to the production and consumption of texts.'<sup>246</sup> In this research, understandings of the power of legal educators, students and the legal profession are examined, explained and explored. Such an analysis is produced through the subjective interpretation of the researcher. It could be argued this method of analysis is open to the potential for allegation of bias,<sup>247</sup> reductionism with too much of a focus on language,<sup>248</sup> privileging agency<sup>249</sup> and validity

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<sup>239</sup> Descombe, above n 3, 308.

<sup>240</sup> Ibid 308-309.

<sup>241</sup> Ibid.

<sup>242</sup> Ibid 308.

<sup>243</sup> Lydia Alix Fillingham and Moshe Susser, *Foucault for Beginners* (For Beginners, LLC, 1993 republished 2007) 101.

<sup>244</sup> William Sullivan et al, *Educating Lawyers* (Wiley, 2007) 21-24; Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>; Law Council Review of Academic Requirements <<http://www1.lawcouncil.asn.au/LACC/index.php/review-of-academic-requirements>>.

<sup>245</sup> Maggie Walter (ed), *Social Research Methods* (Oxford University Press, 2010) 354.

<sup>246</sup> Ibid 353.

<sup>247</sup> Ibid 360.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid 361.

issues.<sup>250</sup> The texts are not viewed in isolation, given that the researcher interprets them and compares and contrasts them with other cross-disciplinary studies to enhance research merit and validity. It is also acknowledged that a close and detailed interpretation and scrutiny through a discourse analysis of relatively small samples of texts has advantages over a large-scale quantitative study.

## IX CONCLUSION

This chapter explains and justifies the research methodology used in this research. It explains the processes used to analyse the data and to reveal the findings. The qualitative, flexible methodological framework is suited to this type of small-scale research.<sup>251</sup> It also allowed triangulation of varied research techniques, including the ability to utilise the findings of the literature reviews, catalogued in Chapters 2 through 5, with the qualitative research techniques of grounded constructive theory and discourse analysis. Constructivist grounded theory<sup>252</sup> is highly relevant for use in legal education settings focusing on social justice issues, as it allows for interpretation and careful scrutiny of rich and complex journal text data, considering both researcher and participants' perspectives. Discourse analysis adds a further broader dimension to understandings in inquiries of this type offering a detailed analysis of the language produced in the social world in terms of power and influence.

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<sup>250</sup> Ibid.

<sup>251</sup> Table 2.

<sup>252</sup> Table 5.

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# CHAPTER 7: USING METHODS OF CONSTRUCTIVIST GROUNDED THEORY FOR ANALYSIS OF FOUNDATION LAW STUDENTS' REFLECTIVE JOURNALS

## I INTRODUCTION

This chapter outlines constructivist grounded theory, the method of analysis used to examine foundation law students' reflective journal texts.<sup>1</sup> The analysis follows the constructivist grounded theoretical approach of Charmaz using coding processes, development of categories from coding, memo writing to the development of dominant themes.<sup>2</sup> The theory provides valuable analytic tools for discovering meaning in the texts.<sup>3</sup> As Charmaz argues, learning 'how participants define their situation, attempting to grasp what they assume, and understanding the problems that confront them'<sup>4</sup> become major sources of researcher's discoveries, with categories enabling researchers to 'conceptualise these discoveries'.<sup>5</sup>

The first section of the chapter explains and examines the coding process used to analyse the student data in the form of reflective journals from 2009 and 2011. The second section shows the process of constructing categories from the 2009 data, through recognising power, purpose and patterns and developing the dominant themes. This sequencing of coding provides dependable steps for research transparency and credibility. The third section reveals the same sequencing of coding and categories for the 2011 data. Memo writing is used to show how the researcher reflects on improving pedagogy. Variations from the 2009 data are also analysed within this section. The fourth section constructs dominant, sometimes overlapping themes from the categories. The concluding section discusses the success of the method in preparation for the discourse analysis. This section includes the interventionist strategies in 2011 to improve legal pedagogy.

## II CODE DEVELOPMENT FROM THE 2009 AND 2011 DATA

One-fifth of the 2009 students' journals were read line-by-line with action codes<sup>6</sup> given to each of the lines.<sup>7</sup> Thirty-eight codes were produced, after a number revisions were made to the number of codes. The thirty-two journals were carefully read, re-read and coded using the

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<sup>1</sup> Kathy Charmaz, *Constructing Grounded Theory* (Sage, 2006); Kathy Charmaz, 'A Constructivist Grounded Theory Analysis of Losing and Regaining a Valued Self' in Frederick Wertz et al (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (Guilford Press, 2011); Kathy Charmaz, 'Grounded Theory Methods in Social Justice Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> edition, 2011).

<sup>2</sup> Ibid.

<sup>3</sup> Charmaz (2006), above n 1, 371.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> See, eg, Charmaz (2006), above n 1, 48.

<sup>7</sup> Ibid.

thirty-eight codes. The 2009 codes and the number of responses for each of the codes within all journals are shown in Table 1.

**TABLE 1: The 2009 Codes and the Number of Responses**

<b>Code</b>	<b>Description</b>	<b>Number of Responses</b>
1.	Likes subject or concept	162
2.	Likes lectures	69
3.	Likes teaching styles	51
4.	Struggles with teaching styles or concept	62
5.	Appreciates easily understandable lectures	13
6.	Comments on assessment	72
7.	Describes course	98
8.	Appreciates clear criteria for assessment tasks	10
9.	Struggles with assessment	21
10.	Appreciates feedback	12
11.	Links feedback with learning	4
12.	Gives opinions	249
13.	Makes judgments	114
14.	Reflective about course and/or learning	256
15.	Questions	92
16.	Describes court	162
17.	Identifies court room roles	200
18.	Values court experience	31
19.	Comments on the legal profession	160
20.	Evaluates the legal profession	91
21.	Evaluates legal systems/court	118
22.	Uses critical thinking	130
23.	Makes links with popular culture	51
24.	Realizes transformative possibilities	56
25.	Changes opinions/positions	26
26.	Values legal guidance/support	18
27.	Acknowledges development in learning	48
28.	Acknowledges ethical issues in law	93
29.	Assesses entering the legal profession	60
30.	Expresses emotion	28
31.	Manages emotion	26
32.	Evaluates ethical problems	30
33.	Reveals names of defendants	8
34.	Uses unprofessional language	16
35.	Likes to journal	2
36.	Questions journaling	3
37.	Struggles with journaling	1
38.	Forms innovative journaling techniques	11

The same coding process was used for the 2011 cohort. Initial codes were developed from line-by-line coding of one-fifth of those journals. During the process there was readjustment of some of the initial codes due to an overlap. Table 2 shows the 2011 codes and the number of responses.

**TABLE 2: The 2011 Codes and the Number of Responses**

Code	Description	Number of responses
1.	Expresses emotion about university environment	151
2.	Likes the course delivery	568
3.	Appreciates group learning	131
4.	Like to interact/participate	73
5.	Self aware of learning techniques	245
6.	Self critical about own learning	115
7.	Like a civil learning environment	18
8.	Likes support with learning	89
9.	Links civility court with professional behaviour	55
10.	Links increased study time with successful study	17
11.	Comments on court experiences	286
12.	Acknowledges self development	77
13.	Comments on gender differences	8
14.	Evaluates entering the legal profession	70
15.	Reflective	510
16.	Makes judgment	235
17.	Gives opinions	450
18.	Questions	190
19.	Likes critical thinking	270
20.	Evaluates the legal system	249
21.	Evaluates legal professionalism	450
22.	Expresses gratitude for course delivery	151
23.	Expresses passion for the law	139
24.	Disillusioned by law	89
25.	Acknowledges cultural heritage and legal impacts	10
26.	Asserts confidence with legal knowledge	43
27.	Likes practising legal skills	60
28.	Stimulated by oral presentations	40
29.	Commented on lack of knowledge acquisition	110
30.	Dislikes the court experience	50
31.	Acknowledges/ understands ethical issues	91
32.	Concerns about lack of professionalism in court	23
33.	Makes links with popular culture	151
34.	Makes inappropriate comments	25
35.	Explicitly influenced by journaling guidance	5
36.	Values journaling	21
37.	Dislikes challenges of the course	15
38.	Transforms views	120

### III DEVELOPING CATEGORIES FROM THE 2009 DATA

Fifteen categories were developed from the 2009 codes. The process of reading and re-reading the codes was repeated to develop the most appropriate categories and to make sure the codes were best represented in the categories. Table 3 shows the categories and codes within each category.

**TABLE 3: 2009 Categories and Codes**

Categories	Codes
1. Engagement with the law unit	1, 2, 3, 7
2. Enjoys teaching techniques	2, 3, 4, 5
3. Challenged by the assessment	6, 8, 9
4. Perceptions of journaling	35, 36, 37, 38
5. Appreciates feedback for learning	10, 11
6. Appreciates a supportive environment	10, 11, 26
7. Values court experience for learning	16, 17, 18, 21, 23
8. Critiques the legal profession	16, 17, 19, 20, 21, 23, 29
9. Enjoys critical thinking	15, 22, 23
10. Likes making judgments	12, 13
11. Appreciates the opportunity to reflect	14, 24, 25
12. Expresses emotion	30, 31
13. Shows ethical/professional perspectives	33, 34
14. Reflects on ethical professionalism	28, 29, 32
15. Evaluates learning opportunities	27

Categories are described and analysed for ‘power, purpose and pattern’.<sup>8</sup> Student comments illustrate focal points of analysis, with those categories failing to serve a purpose for the analysis collapsed into other appropriate categories.<sup>9</sup> Final categories are revealed in the following sections of the chapter.<sup>10</sup> There is overlap between some of the categories so that the analysis within the sub-sections of the chapter may appear repetitious because of the overlapping nature of the categories. Some examples of de-identified numbered journals and/or numbered codes provide evidence to support the arguments made within the following sub-sections of the chapter. Direct quotes from de-identified numbered journals also provide evidence to support the position taken. Where numbers are provided from the data in the Tables they are referred to as N within the footnotes with the number of responses following the N.

#### *A Category 1: Engagement with the Law Unit*

Students’ engagement with the law unit derives from concepts taught within it, teaching styles and unit delivery. The pattern emerging from this category is that students’ reflections about the course are described more positively than negatively. Experiences about the course concepts and unit are described as interesting, enjoyable, enriching, engaging and vital to complete.<sup>11</sup> Interactive classes are valued by students for a number of reasons including clarification of thoughts, doubts and learning from class discussions and debates.<sup>12</sup> The power of the legal educators impact on learning is evident with texts revealing admiration and gratitude for motivated and passionate teaching teams. A variety of different types of lectures,

<sup>8</sup> Charmaz (2006), above n 1, 158.

<sup>9</sup> Ibid 159.

<sup>10</sup> Ibid 162; Chapter 7 II A-O; Table 3; Chapter 7 III B-I; Table 4.

<sup>11</sup> Journal 5; Journal 9; Journal 14; Journal 15; Journal 18; Journal 22; Journal 24; Journal 26; Journal 27.

<sup>12</sup> Journal 10; Journal 19; Journal 22; Journal 25; Journal 27.

including less traditional methods of course delivery, such as video-technology also show stimulation with learning.<sup>13</sup>

### *B Category 2: Enjoys the Teaching Techniques*

Patterns of student engagement are revealed in both relation to the teaching style of the legal educator and the learning environment. Students frequently enjoy legal educators' humour, passion, animation and honesty.<sup>14</sup> These educators are described most favourably particularly where the style is compatible with the student's learning style.<sup>15</sup> Another form of engagement is the educator who facilitates a supportive learning environment through actively listening, advising and encouraging class interaction through debate and discussion.<sup>16</sup> There are less frequent patterns of disengagement with teaching techniques, although disengagement is evident in comments relating to educators presenting too much information, disruptions to formal lectures, revision of pre-existing knowledge and negativity about the profession.<sup>17</sup>

### *C Category 3: Challenges the Assessment*

Forms of university assessment have a powerful effect on students.<sup>18</sup> The key patterns relating to the challenges of assessment are uncertainty about the expectations of university assessment tasks such as selecting an essay topic, compliance with stylistic requirements including referencing and word limits.<sup>19</sup> Students are concerned when assessment tasks are difficult as this can be a barrier to learning and achievement so appreciation is shown for guidance on criteria for assessment.<sup>20</sup> Techniques to clarify assessment expectations are therefore appreciated, including class discussions for answering or understanding tutorial problems.<sup>21</sup> Where students are able to reflect on improving their own performance and take responsibility for their own learning, they are empowered and express confidence.<sup>22</sup>

### *D Category 4: Perceptions of Journal Writing*

Journaling is a means to reflective practice about learning.<sup>23</sup> Patterns in the data show most students enjoy journal writing<sup>24</sup> even if they find it challenging<sup>25</sup> or do not recognise its

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<sup>13</sup> Journal 4; Journal 9; Journal 17; Journal 20; Journal 27; Journal 32.

<sup>14</sup> Journal 7; Journal 9; Journal 20; Journal 32.

<sup>15</sup> Journal 4.

<sup>16</sup> Journal 4; Journal 10; Journal 19; Journal 24; Journal 26; Journal 31.

<sup>17</sup> Journal 4; Journal 5.

<sup>18</sup> Code 6; Code 8; Code 9.

<sup>19</sup> Journal 2; Journal 4; Journal 10; Journal 14; Journal 24; Journal 25; Journal 30.

<sup>20</sup> Code 8; Journal 2; Journal 10; Journal 14.

<sup>21</sup> Journal 4; Journal 9; Journal 14; Journal 24; Journal 25; Journal 30.

<sup>22</sup> Journal 4; Journal 31.

<sup>23</sup> Journal 9; Journal 12; Journal 15; Journal 21; Journal 26; Journal 28; Journal 30.

<sup>24</sup> Journal 2; Journal 9; Journal 12; Journal 15; Journal 26.

<sup>25</sup> Journal 9; Journal 12.

value.<sup>26</sup> Only a few students find the lack of a suggested structure challenging,<sup>27</sup> do not take such writing as seriously as other forms of academic assessment or simply dislike journal writing.<sup>28</sup> While small numbers of students within the cohort are uncomfortable about journal writing or dislike it,<sup>29</sup> a greater number of students value the way journaling helps them to transform their perspectives about learning more positively.<sup>30</sup> Students also show that journal writing can allow opportunities to develop their own learning.<sup>31</sup> Some students find difficulty in deciding the appropriate material to include within their work. Other students do not understand what is expected of them and write a descriptive chronological account of the semester rather than a reflective journal.<sup>32</sup> Many students are empowered by the freedom to express themselves without the shackles of formal writing.<sup>33</sup>

#### *E Category 5: Appreciates Feedback for Learning*

The main pattern that emerges from this category is that students recognise the value and appreciate oral and written feedback for developing their learning.<sup>34</sup> Oral feedback encourages discussion and debate, supports the analysis of subject matter covered in lectures<sup>35</sup> and enables discoveries about learning law ‘from the very first tutorial’.<sup>36</sup> Links are also made between positive feedback and a supportive learning environment.<sup>37</sup> Written feedback is mostly described as very helpful to students in relation to improving their next assignment.<sup>38</sup> A small number of students criticise unclear written or untimely feedback.<sup>39</sup> Not receiving timely feedback is described as ‘disappointing as I would much prefer to see how I went before making my decision’<sup>40</sup> on ‘which section to do in the exam’.<sup>41</sup>

#### *F Category 6: Appreciates a Supportive Learning Environment*

This category incorporates codes associated with appreciation of feedback,<sup>42</sup> support<sup>43</sup> and guidance.<sup>44</sup> Many students do not directly discuss legal guidance and support<sup>45</sup> but those who

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<sup>26</sup> Journal 20.

<sup>27</sup> Journal 1; Journal 6.

<sup>28</sup> Journal 36; Journal 37.

<sup>29</sup> Above n 28.

<sup>30</sup> Journal 9; Journal 12; Journal 15; Journal 21; Journal 26; Journal 28; Journal 30.

<sup>31</sup> Journal 15; Journal 21; Journal 28.

<sup>32</sup> Journal 9; Journal 30.

<sup>33</sup> Journal 2; Journal 9; Journal 12; Journal 15; Journal 26; Journal 28; Journal 30.

<sup>34</sup> Code 10; Code 11.

<sup>35</sup> Journal 19; Journal 26.

<sup>36</sup> Journal 4; Journal 19; Journal 24.

<sup>37</sup> Journal 26.

<sup>38</sup> Journal 25.

<sup>39</sup> Journal 5; Journal 6.

<sup>40</sup> Journal 6.

<sup>41</sup> Ibid.

<sup>42</sup> Code 10.

<sup>43</sup> Code 11; Code 26.

<sup>44</sup> Code 11.

<sup>45</sup> 18 out of 30.

do appreciate their value.<sup>46</sup> Students are impressed by a professional, caring environment, which facilitates positive interactions between the educators and the students.<sup>47</sup> Discussions supporting deeper learning are also valued.<sup>48</sup> The following remark provides evidence of this position, ‘I particularly found the discussions in the tutorials worthwhile, as they gave a sounding board for different arguments and offered counter arguments I had not heard of’.<sup>49</sup> Some students like the support provided by the honest comments made by lecturers about the future direction and challenges of the legal profession.<sup>50</sup> By comparison, others reveal their appreciation of the support and guidance from the tools and resources provided for them on MyLO,<sup>51</sup> particularly where they missed lectures.<sup>52</sup>

#### *G Category 7: Values the Court Experience for Learning about the Law*

Three patterns emerge relating to the value of court. Firstly, students value the opportunity to observe the court experience<sup>53</sup> and to compare what they see in real life with their perceptions derived from popular culture, highlighting what they value from real life experiences. Not every student enjoys the experience, with a number of students describing the atmosphere as intimidating, voyeuristic and sometimes boring.<sup>54</sup> Many students intimately link the value of the court environment with engagement, learning<sup>55</sup> and illuminating, like a ‘big light bulb moment’.<sup>56</sup> Secondly, court experiences allow students to reflect about the formality,<sup>57</sup> organisation and roles<sup>58</sup> of the legal profession and the defendants’ behaviour providing an excellent platform for contrasting and comparing real life with fiction.<sup>59</sup> The students who make these comparisons make particularly good connections between real court experiences and images portrayed in popular cultural texts, film and television shows. Many students value experience in court to make honest and open judgments about ethical and professional behaviour in action.<sup>60</sup> Student remarks are both critical and praising.<sup>61</sup> Some students discuss the transgression of the judiciary or legal practitioners who go beyond acceptable behavioural boundaries.<sup>62</sup> Others students praise and admire the lawyer or judge where confidence, skill,

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<sup>46</sup> 12 out of 30.

<sup>47</sup> Journal 24.

<sup>48</sup> Journal 2.

<sup>49</sup> Journal 10.

<sup>50</sup> Journal 3.

<sup>51</sup> MyLO contains course information, timetables, course outlines, notifications, lecture notes, lecture recordings, tutorial guides and some course readings.

<sup>52</sup> Journal 12; Journal 13.

<sup>53</sup> Code 18. Two-thirds of students comment on the value the court experience.

<sup>54</sup> Journal 5, Journal 7; Journal 11, Journal 31.

<sup>55</sup> Journal 7; Journal 15; Journal 17.

<sup>56</sup> Journal 10.

<sup>57</sup> Journal 3.

<sup>58</sup> Code 17.

<sup>59</sup> Code 23.

<sup>60</sup> Journal 11; Journal 15; Journal 17.

<sup>61</sup> Above n 60.

<sup>62</sup> Journal 22.



respect and empathy are displayed.<sup>63</sup> Thirdly, the court experience is valued for allowing the students to assess their position about entering the profession. The environment seems to be a powerful experience in influencing students' perspectives in relation to whether or not they will continue studying law or follow a career path in law.

#### *H Category 8: Critiques the Legal Profession*

The courtroom, lectures, readings and popular culture provide material and experiences for critical reflection.<sup>64</sup> Student descriptions of the legal profession from courtroom observations provide the basis for critical analysis about the profession in court.<sup>65</sup> Comments are broad ranging, from comments about the legal professionals' appearance, demeanour and etiquette to those about legal skills and defendants' access to justice. Students recognise the central power of the judge and magistrate in the courtroom. One student writes, '[t]he Magistrate had a crucial role, leading proceedings as well as making her judgment'.<sup>66</sup> Some students are critical of the factors in sentencing Magistrates have or have not taken in account in their view,<sup>67</sup> whereas others criticise what they perceive to be a lack of preparation or organisation relating to the lawyer's performance.<sup>68</sup> By contrast, the students also show empathy with the judges who reprimand lawyers for varying breaches of ethical codes of conduct.<sup>69</sup> The importance of the profession in terms of efficiency and teamwork in the court and facilitating justice reveals another emerging pattern in the texts.<sup>70</sup> Examples include students' impressions of how quickly a Magistrate dealt with shorter court matters and how the judge and lawyers appear to work as a team in certain circumstances regarding sentencing.<sup>71</sup>

Entry into the legal profession falls within this category.<sup>72</sup> A pattern that emerges is the direct influence that law school can have with engaging students with a pathway to a legal career. Positive comments about law school are made. For example, the 'law school made such a positive impression on me'<sup>73</sup> and the influence of the law school experience in changing career paths from a 'marine biologist'<sup>74</sup> to a law related career was a result of one experience. Some students show an interest in entry into the profession at the beginning of their journals and maintain this interest, whereas a small number remain uninterested in practice but still interested in law. Students grapple with ethical dilemmas faced by legal practitioners. 'At

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<sup>63</sup> Journal 11.

<sup>64</sup> Code 17; Journal 18.

<sup>65</sup> Code 16; Code 19; Code 21.

<sup>66</sup> Journal 22.

<sup>67</sup> Ibid.

<sup>68</sup> Journal 16.

<sup>69</sup> Journal 10.

<sup>70</sup> Journal 18.

<sup>71</sup> Journal 5; Journal 23.

<sup>72</sup> Code 29.

<sup>73</sup> Journal 30.

<sup>74</sup> Ibid.

what point do you compromise legal principal (sic)?’<sup>75</sup> ‘Will I be strong enough to be an ethical lawyer?’<sup>76</sup> Other students are more confident that they will be professional practitioners, working in a just and equitable manner for clients rather than focusing on profit.<sup>77</sup>

#### *I Category 9: Enjoys Critical Thinking*

Questioning is part of critical thinking<sup>78</sup> and is used to explore numerous aspects of the course.<sup>79</sup> Critical thinking is prevalent in the data indicating the importance and enjoyment students gain from critically thinking and evaluating.<sup>80</sup> Students like to give opinions, weigh up perspectives, evaluate, analyse and draw conclusions.<sup>81</sup> Students question their own abilities to succeed. Critical thinking is applied to multiple topics, providing a complex pattern of themes. Many of the student journals provide evidence of critical thinking to review and explore the legal system, the ambits of ethical behaviour and values, student learning, the course, popular culture, essay topics and assessing entering the profession. A common theme relates to questioning ethical issues. The following paragraph of text provides supporting evidence in relation to this type of critical thinking and questioning:

Reality is open to interpretation and this is what lawyers do - interpret events in ways which are advantageous to their argument ... it is not the side that is “right” that wins, rather the side which uses the information ... in the most convincing way. Is this the way the law works also? Is this not how life itself operates? By differing and varied interpretations of the same event. ... Thank goodness I am doing a Bachelor of Questioning and Reasoning.<sup>82</sup>

#### *J Category 10: Likes making Judgements*

Interrogation of journal texts indicates that students like giving opinions and making judgements on a plethora of topics. While these include abstract law course concepts, teaching and learning, educators, sentencing, case law, court decisions, more commonly students review court systems, legal etiquette,<sup>83</sup> attire and performance within the court environment.<sup>84</sup> Comments about legal professionals in court range from praise about performance to criticism about lack of organisation, inadequate preparation and poor communication skills.<sup>85</sup> Students point out effective performance of legal roles.<sup>86</sup> One student maintains, ‘the judge was experienced and very composed. She proved there are great women

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<sup>75</sup> Journal 8.

<sup>76</sup> Journal 15.

<sup>77</sup> See, eg, Journal 18.

<sup>78</sup> Code 15.

<sup>79</sup> N=92.

<sup>80</sup> N=222.

<sup>81</sup> Journal 22.

<sup>82</sup> Journal 7.

<sup>83</sup> Code 11; Code 12.

<sup>84</sup> Journal 2.

<sup>85</sup> Journal 22.

<sup>86</sup> Journal 55.

judges’.<sup>87</sup> Another journal entry implies that it is surprising that women perform as effectively as their male counterparts. He describes a woman lawyer as ‘unbelievably fierce and surprising in her demeanour, quick, tough and to the point’.<sup>88</sup>

Students often comment on or make assumptions about the defendant’s attire, attitude and socio-economic class.<sup>89</sup> For example, the defendant’s attitude about being sentenced in the following way, is described as having ‘all the seriousness to it as being chastised for leaving the toilet seat up’.<sup>90</sup> Some comments are unprofessional from the perspective of how a law student views and labels a defendant: ‘A “bogan in a flanny”’.<sup>91</sup> This student even more strongly declares, ‘99% of the time, your client would be some bogan scum who should be shot in the back of the head to prevent procreation’.<sup>92</sup> Although there are only a relatively small number of unprofessional responses made in the cohort, these are important to note so that the educators can guide the students in a more professional direction concerning their language use and their future duties to clients.<sup>93</sup> By contrast, other students express empathy about the defendants, based on circumstances and not what they look like.<sup>94</sup> This shows that foundation students can begin to understand the importance of ethical duties to clients and develop understandings about acting in the best interests of clients.

#### *K Category 11: Appreciates the Opportunity to Reflect*

Reflective excerpts<sup>95</sup> are expressed in the journals most commonly using different first person writing styles.<sup>96</sup> Students appreciate the opportunity to reflect about the course,<sup>97</sup> law at university or having a legal career.<sup>98</sup> Reflections on learning, grades, assessment, court environment, the legal profession, popular culture, legal skills and lawyers’ personalities<sup>99</sup> also permeate the texts. Students analyse court visits and the behaviour, skills and personalities of lawyers and judges,<sup>100</sup> which is often compared with popular culture.<sup>101</sup>

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<sup>87</sup> Ibid.

<sup>88</sup> Journal 6.

<sup>89</sup> Journal 11.

<sup>90</sup> Journal 21.

<sup>91</sup> Journal 17.

<sup>92</sup> Journal 1.

<sup>93</sup> Code 34, N=16.

<sup>94</sup> Journal 23; Journal 32.

<sup>95</sup> Code 14.

<sup>96</sup> Journal 18; Journal 19.

<sup>97</sup> N=510.

<sup>98</sup> Journal 18; Journal 20.

<sup>99</sup> Journal 9; Journal 16; Journal 18; Journal 19.

<sup>100</sup> Journal 18.

<sup>101</sup> Journal 19.

After undertaking the course, students seem to realise and appreciate the scope a law degree has for them. The students evaluate their own learning, discuss their grades,<sup>102</sup> the assessment and the course. Students discuss transformations about their learning out of tutorial discussions using information from application of background knowledge and lectures.<sup>103</sup> Excitement about future learning is depicted in the following entry, ‘as I arrived in the tutorial I realised that this was where we were going to learn. This is where I could discuss and debate our ideas, and really learn about law’.<sup>104</sup>

Many students reflect about careers as lawyers and about whether they would be suited to a profession of anticipated stress and pressures. Students explain this in different ways. One remarks that ‘[s]tress and depression fell into a large category where he (the guest lecturer) demonstrated a large drop out rate in the legal profession ... I had never thought about these factors before’<sup>105</sup> while another student concludes that ‘[i]t made me question whether I really wanted to be a part of it’.<sup>106</sup>

#### *L Category 12: Expresses Emotion*

Students tend to express emotion about law school and the legal profession and how to manage it.<sup>107</sup> Concern is linked with introductory lectures, writing legal essays and journals, entry to the profession, inequity within the legal environment<sup>108</sup> and the ability to cope as a legal practitioner.<sup>109</sup> Entry into the profession is questioned:

... these lectures have really made me consider the associations I have made with the profession. Why am I considering the profession when I view it so cynically? Already I am experiencing conflict, before I am even close to becoming a professional.<sup>110</sup>

Inequity within the legal environment is also captured emotively in students’ poems.<sup>111</sup> Students appreciate the steps taken to manage anxieties with law school, such as obtaining feedback and being part of a supportive environment. Some entries reveal a much more confident attitude at the end of the semester.<sup>112</sup> Accordingly concluding remarks include ‘with a basic understanding of the legal system, I can now begin to figure out what direction I want to travel in’ together with ‘the course has been a positive but challenge (sic) experience. The

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<sup>102</sup> Ibid.

<sup>103</sup> Journal 1; Journal 13; Journal 17; Code 24; Code 25; Code 29.

<sup>104</sup> Above n 103.

<sup>105</sup> Journal 6.

<sup>106</sup> Journal 32.

<sup>107</sup> Code 30; Code 31.

<sup>108</sup> Journal 21; Journal 28.

<sup>109</sup> Journal 4; Journal 9; Journal 25.

<sup>110</sup> Journal 15.

<sup>111</sup> Journal 21; Journal 28.

<sup>112</sup> Journal 3; Journal 6.

road ahead will be a long one but I am more than ready to face it with heads up and with an optimistic attitude!'.<sup>113</sup>

#### *M Category 13: Shows Ethical/ Professions Perspectives*

Evaluation of ethical problems<sup>114</sup> and codes relating to professionalism<sup>115</sup> are captured within this category. The challenges of ethical positioning are recognised.<sup>116</sup> Whilst many students recognise key elements of professionalism, a significant number of students use inappropriate language, commonly directed at either defendants or legal professionals. One example is the use of the term 'bogan'<sup>117</sup> for defendants. A small number of students either make unprofessional remarks about defendants<sup>118</sup> or identified names of defendants. Whilst students do not owe a duty of confidentiality to defendants, it is preferable that students do not identify defendants to in order to foster the importance of preserving confidentiality for future professional practice.

#### *N Category 14: Reflects on Ethical Professionalism*

Students reflect on ethical professionalism particularly when assessing entering the legal profession.<sup>119</sup> Ethical perspectives in the journals commonly relate to the conduct of lawyers and judges.<sup>120</sup> Courtroom experience allows students to examine how legal practitioners act and reflect on how they might act in similar circumstances. A number of students note the difficulties and struggle with resolving ethical dilemmas while others more confidently evaluate these issues.<sup>121</sup> Entry into the profession<sup>122</sup> fits within this category because students discuss the ethical dilemmas potentially faced after admission to legal practice. Approximately one-third of the students did not comment on entry into the profession and another third suggested that they were not yet in a position to make a decision given that they were only in the early stages of study. The remaining third show overwhelmingly positive interest towards entry into the profession, however, one international student decided not to become a lawyer given her belief that her 'accent would play against'<sup>123</sup> her and it would work against her 'all the time'.<sup>124</sup>

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<sup>113</sup> Journal 6.

<sup>114</sup> Code 32.

<sup>115</sup> Code 33; Code 34.

<sup>116</sup> Journal 15.

<sup>117</sup> Journal 17.

<sup>118</sup> N=16.

<sup>119</sup> Journal 4; Journal 9; Journal 25.

<sup>120</sup> Journal 20.

<sup>121</sup> Code 32.

<sup>122</sup> Ibid.

<sup>123</sup> Journal 26.

<sup>124</sup> Ibid.

Those who wish to become lawyers note the potential challenges and ethical dilemmas they may face on entry to the profession and a willingness to embrace those challenges. Some students reveal an understanding that they may face ethical dilemmas as a future legal practitioner and question whether they will be able to deal with such situations. They therefore question entry into the profession. Others critically evaluate the ethical behaviour of lawyers in popular culture, usually film or television programs.<sup>125</sup> For foundation students in an undergraduate law degree, these are insightful comments because they show realistic diverse perspective given their level of legal education.

#### *O Category 15: Evaluate Learning Opportunities*

Students acknowledge developments in their own learning,<sup>126</sup> with some recognising the importance of their individual learning experiences.<sup>127</sup> Students rarely comment on not learning from the course,<sup>128</sup> one student describing the course as ‘the most interesting and productive of my education’.<sup>129</sup> Aspiring to high grades even in a foundation year is evident<sup>130</sup> and correspondingly students comment on the importance and value of both oral and written feedback. The importance of feedback relates to the wide range of issues contained in the other categories. Oral feedback in the tutorial setting facilitates discussion and analysis of subject matter covered in lectures.<sup>131</sup> This student’s words capture this opportunity: ‘I discovered from the very first tutorial that this is where ... I was going to learn about the law through discussion and debate with other students with feedback coming not only from teachers but other students’.<sup>132</sup>

Students discuss valuing feedback for learning, clarifying expectations and improving their work.<sup>133</sup> One student comments that direct feedback from the legal educator assists with understanding content and what to expect and to question. Written remarks and comments are described as very helpful in improving future assignments. Another student, however, is critical of written feedback for not being sufficiently specific or timely.<sup>134</sup> Students evaluate learning opportunities indicating self-awareness about their own learning. The impact of educators appears from a significant number of students expressing high levels of gratitude to

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<sup>125</sup> Journal 13; Journal 16; Journal 23; Journal 32.

<sup>126</sup> Code 27.

<sup>127</sup> Journal 3.

<sup>128</sup> Journal 5.

<sup>129</sup> Journal 4.

<sup>130</sup> Journal 6.

<sup>131</sup> Journal 19; Journal 26.

<sup>132</sup> Journal 19.

<sup>133</sup> Journal 4; Journal 24.

<sup>134</sup> Journal 5.

the teaching team or lecturer.<sup>135</sup> Examples include awarding the course a distinction,<sup>136</sup> thanking the educators of the semester<sup>137</sup> and concluding journals with positive responses to the unit.<sup>138</sup>

#### IV DEVELOPING CATEGORIES FROM THE 2011 DATA: MEMO WRITING AND THE PROCESS OF CATERGORISATION

A memo writing process by the researcher serves to give credibility to the research.<sup>139</sup> It focuses on the effect of the implementation of interventionist pedagogical strategies in order to improve student journaling. Memo writing about the journals and the literature helped the researcher implement strategies to enhance guidance, direction, instruction and feedback. The same process of categorisation of the 2011 codes is used. Like the 2009 texts, these 2011 texts are interrogated for power, purpose and pattern.<sup>140</sup> There is also overlap between the codes used and the development of the categories.

Categories were tentatively developed and revised once coding had taken place. Where possible, categories of the same type of those of 2009 were used to facilitate comparison. Each category for 2011 is explained in terms of codes and the number of responses recorded to give an overall pattern in relation to the common themes. The categories, codes and responses are catalogued in Table 4. The categories for 2011 are strikingly similar to those for 2009, with common issues relating to student engagement, what students value within the teaching and learning environment and students' perspectives of the legal profession, ethics and professionalism. Subtle differences emerge between categories in relation to assessment, reflection, student awareness and responsibility for learning.

**TABLE 4: 2011 Categories and Codes**

Categories	Codes	Number of Responses
Engages with law school learning environment	1, 2, 3, 4, 7, 8, 22, 26, 27, 33, 37, 38	1552
Values the court environment for learning about the law	9, 11, 30, 32	448
Likes exercising legal skills	27, 28, 29	198
Shows self awareness and responsibility for learning	2, 5, 6, 10, 12	1022
Provides ethical professional perspectives	9, 13, 14, 21, 31, 32, 33, 34	737
Enjoys critical thinking, making judgments and transforms views	16, 17, 19, 20, 21, 38	1774
Appreciates reflection	15, 18, 25	710
Discusses the value of journaling	35, 36	26

<sup>135</sup> Journal 2; Journal 4; Journal 5; Journal 10; Journal 13; Journal 15; Journal 24; Journal 26; Journal 27; Journal 31; Journal 32.

<sup>136</sup> Journal 2.

<sup>137</sup> Journal 4; Journal 17; Journal 32.

<sup>138</sup> 21 of the 32 journals.

<sup>139</sup> Charmaz (2006), above n 1.

<sup>140</sup> Ibid.

### *A Category 1: Engages with Law School Learning Environment*

This category reveals students' perspectives about university, the value of supportive and civil learning environments, course delivery, legal skills, popular culture and group learning. Students frequently describe excitement, nervousness, apprehension and anxiety about university.<sup>141</sup> They can also be concerned about the negative impact emotions may have on academic performance<sup>142</sup> and undertaking a legal career.<sup>143</sup> Initial nervousness about the first year experience is usually transformed to greater confidence.<sup>144</sup>

Support from the teaching staff is crucial to learning in the legal curriculum and assists with it motivation and engagement.<sup>145</sup> The civility of the learning environment can be relevant to student engagement and support, with a number of students commenting on their appreciation of a civil learning environment.<sup>146</sup> For example, 'everyone was laughing and smiling before the presentations trying to encourage those who appeared nerve wracked'.<sup>147</sup> Many students also comment on their appreciation of the support of the tutorial groups, expressing appreciation of the tutor and acknowledging the benefits of group work for learning.<sup>148</sup> Interaction and participation are key components of group learning.<sup>149</sup> A number of students also comment on liking interaction and participation.<sup>150</sup> Other students express gratitude,<sup>151</sup> with some specifically commenting on the value of journaling itself.<sup>152</sup> Gratitude is much more prevalent in data than an unwillingness to embrace the challenges of the course.<sup>153</sup> Such gratitude is intimately linked with appreciation and engagement.<sup>154</sup>

Liking course delivery is the most frequently discussed,<sup>155</sup> showing how much the students like (or dislike) the course for sometimes similar and sometimes different reasons. For one student legal research was more of a hobby than a task.<sup>156</sup> Like the 2009 cohort, the 2011 cohort value a variety of lecturers, liking some teaching styles and disliking others. Some students appreciate the honesty and express gratitude towards lecturers who are negative about the challenges of practice and the link between practice, stress and depression, whereas

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<sup>141</sup> Code 1.

<sup>142</sup> Journal 35.

<sup>143</sup> Journal 37; Journal 65.

<sup>144</sup> N=151.

<sup>145</sup> Code 8.

<sup>146</sup> Code 7, N=18.

<sup>147</sup> Journal 7.

<sup>148</sup> N=131.

<sup>149</sup> Code 4.

<sup>150</sup> N=73.

<sup>151</sup> Code 22.

<sup>152</sup> Code 36, N=21.

<sup>153</sup> Code 37.

<sup>154</sup> Code 22.

<sup>155</sup> Code 2, N=568.

<sup>156</sup> Journal 39.



others do not like this approach. Some students particularly enjoy the practical aspects of legal problems solving and/or legal skills.<sup>157</sup> The 2011 students prefer the legal problem solving lectures more than the 2009 students. This could be because the focus of the 2011 course became more about thinking like a lawyer than was the case for the 2009 cohort of students. A number of journal entries also depict confidence with legal knowledge.<sup>158</sup> This is likely to be linked with engagement with the material presented in the course. Other students enjoy stimulating lectures that can be linked with popular culture, with many students discussing popular culture with enthusiasm.<sup>159</sup> Not surprisingly, they reveal a dislike for boring activities and prefer entertainment.<sup>160</sup>

### *B Category 2: Values the Court Experience for Learning about the Law*

Students enjoy commenting on court experiences and do so frequently.<sup>161</sup> Students like the opportunity to learn about the delivery of legal concepts and knowledge through visiting the courtroom. Court experiences therefore are included within this category.<sup>162</sup> The following reflection shows an awareness of the value of the court experience: ‘An aspect became clear to me in the first moments of the case I was witnessing, was the role of the judge to ensure correct legal proceeding in the case’.<sup>163</sup> Whilst most students’ writing shows stimulation by courtroom visits, a number of students comment on boredom with it,<sup>164</sup> thus providing contrasting views within this category. Concern about lack of civility and professionalism<sup>165</sup> from the court experiences is captured in some of the comments of the students. A number of students also discuss the links between civility in court and positive professional behaviour.<sup>166</sup>

### *C Category 3: Likes Exercising Legal Skills*

This category shows students like to act in lawyer’s roles and appreciate exercising skills that enable them to think and be more like lawyers. The category subsumes codes that incorporate an appreciation of exercising, practicing or learning legal skills.<sup>167</sup> Legal skills are discussed frequently.<sup>168</sup> A significant number of students are stimulated by oral presentations but not without acknowledging the challenges associated with them.<sup>169</sup> Some discuss anxiety in

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<sup>157</sup> Code 27.

<sup>158</sup> Code 26, N=43.

<sup>159</sup> Code 33, N=151.

<sup>160</sup> Code 38, N=41.

<sup>161</sup> N=286.

<sup>162</sup> Code 11.

<sup>163</sup> Journal 7.

<sup>164</sup> Code 30.

<sup>165</sup> Code 32.

<sup>166</sup> Code 9, N=55.

<sup>167</sup> Code 27.

<sup>168</sup> Code 27, N=60, Code 28, N=40.

<sup>169</sup> N=40.

relation to the oral presentations.<sup>170</sup> A number of students do, however, transform anxiety to a sense of achievement having undertaken the presentation.<sup>171</sup> The experience of completing the presentation is similarly described as an amazing sense of achievement, calmness once it was over,<sup>172</sup> gaining connections with law,<sup>173</sup> and acquiring a most valuable skill.<sup>174</sup>

#### *D Category 4: Shows Self-Awareness and Responsibility for Learning*

This category reflects on the multiple positions students take in respect of their own learning. Self-awareness of students' own learning techniques is of key relevance in this category, as many students enjoy discussing this.<sup>175</sup> In so doing, they also critically evaluate course delivery, making their liking of the course delivery relevant to this category.<sup>176</sup> Self-awareness frequently correlates with self-criticism. A relatively high number of students indicate high levels of self-doubt and self-criticism in their journaling.<sup>177</sup> A significant number of students acknowledge and comment on self-development,<sup>178</sup> whereas fewer reveal a connection between increased study time and successful learning.<sup>179</sup> The students also express some concerns about having the mental strength and resilience to practice law,<sup>180</sup> which is clearly linked with self-awareness about their own anticipated personal attributes.

#### *E Category 5: Provides Ethical/Professional Perspectives<sup>181</sup>*

This category is important because 2011 students were directed to take ethical and professional perspectives into account for the assessment of their journals. The power of the courtroom experience to students is evident. Patterns in this category show that students are able to acknowledge and understand ethical issues and use popular culture as a way of exploring professional positions. Some students are empowered by distancing themselves from the defendants they observe in court whereas others realise the importance of not judging the defendants by their socio-economic status, their dress, their accents or the suburbs in which they live.<sup>182</sup>

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<sup>170</sup> Code 42.

<sup>171</sup> Journal 1; Journal 6; Journal 9; Journal 16; Journal 31; Journal 33; Journal 35; Journal 38; Journal 45; Journal 47; Journal 48; Journal 57; Journal 59; Journal 76; Journal 77.

<sup>172</sup> Journal 12.

<sup>173</sup> Journal 7.

<sup>174</sup> Journal 9.

<sup>175</sup> Code 5, N=245.

<sup>176</sup> Code 2.

<sup>177</sup> N=155.

<sup>178</sup> N=77.

<sup>179</sup> Code 10, N=17.

<sup>180</sup> Code 40.

<sup>181</sup> Code 9; Code 13; Code 14; Code 21; Code 31; Code 33; Code 34.

<sup>182</sup> Journal 1; Journal 18; Journal 22; Journal 29; Journal 57; Journal 64; Journal 71.

A number of students discuss a connection between civility in court and professionalism.<sup>183</sup> Insightful students also comment on and discuss subtle gender differences<sup>184</sup> within an ethical/professional framework and compare and contrast differences in professional behaviours. While evaluating entry into the profession, students frequently discuss the ethical or professional dilemmas that may arise.<sup>185</sup> In particular, they comment on concerns relating to how they may or may not be able to act, and how issues of profit over ethics may be of concern. For example, one student recognises that being exposed to these issues has helped in her ‘understanding of the insights into the legal profession and made’<sup>186</sup> her ‘interest in the law stronger in relation to social justice issues’.<sup>187</sup>

Significant numbers of students acknowledge and understand ethical issues.<sup>188</sup> A few students write with concern over the lack of civility and professionalism within court.<sup>189</sup> Some students are able to effectively compare and contrast popular culture with real court experiences to show ethical/professional perspectives.<sup>190</sup> A number of students make inappropriate and unprofessional comments<sup>191</sup> about court proceedings, particularly about defendants’ behaviour. It is relevant to this category because it shows that ethical and professional perspectives in students need development.

#### *F Category 6: Enjoys Critical Thinking, Making Judgments and Transformation*

This category relates to critical thinking, making judgments and transformation. The 2011 course structure emphasises the importance of such skills. Codes relating to making judgments,<sup>192</sup> giving opinions,<sup>193</sup> questioning,<sup>194</sup> critical thinking,<sup>195</sup> evaluation of members of the profession<sup>196</sup> and transforming views<sup>197</sup> are appropriately included within this category. It is the largest category for the 2011 students, showing that students like to develop such skills and value them as important attributes.

This category contains a number of different elements related to critical thinking. Like the 2009 cohort, critical thinking is applied to multiple topics, including the legal system, values

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<sup>183</sup> Code 9, N=55.

<sup>184</sup> Code 13.

<sup>185</sup> Code 14.

<sup>186</sup> Journal 9.

<sup>187</sup> Ibid.

<sup>188</sup> Code 31, N=91.

<sup>189</sup> Code 32, N=23.

<sup>190</sup> Code 33.

<sup>191</sup> Code 34.

<sup>192</sup> Code 16.

<sup>193</sup> Code 17.

<sup>194</sup> Code 19.

<sup>195</sup> Code 20.

<sup>196</sup> Code 21.

<sup>197</sup> Code 38.

and ethical/non-ethical behaviour, aspects of personal learning, the course, assessment processes, popular culture and assessing entering the profession. The 2011 cohort tend to provide more detailed explanations and evaluations of the topics. The 2011 journals tend to be longer, more explicit and focus on important elements of the course. They are more evaluative than the glossy diarized description found in some of the 2009 journals. 2011 journals provide evidence to support their positions and arguments, which is likely to be because of the added guidance and instruction given to this cohort.

Like the 2009 cohort, the 2011 cohort frequently make judgments about an array of topics. Students review court systems, popular culture etiquette, attire and performance within the court environment. They like making judgments about the judges, lawyers and defendants. Common comments in relation to defendants relate to their attire, attitude, demeanour and socio-economic class.<sup>198</sup> Despite guidance to the contrary directing students to be professional with their comments, some comments are unprofessional and can be viewed as derogatory.<sup>199</sup> It could be that students have not read the journal guide, or that they have not linked their comments with an unprofessional attitude. They might well consider such comments to be socially acceptable and part of everyday colloquial language. However, while the journal writing allows students to write more informally, this does not mean that they should write in an unprofessional way.

Transformative views are more evident in the 2011 cohort than in the 2009 cohort. A number of students transform their views on continuing studying law at university, entry into the profession and the willingness to transform their views from negative to positive in relation to journal writing.<sup>200</sup> These students acknowledge that journal writing assists them in transforming their views about the processes of legal education. This reflects the position that the more students critically reflect on the issues of their legal education, the more they may appreciate the possible benefits of journal writing.

#### *G Category 7: Appreciates the Opportunity to Reflect<sup>201</sup>*

This category concerns the importance of reflection about the legal course and legal issues. Reflection<sup>202</sup> and questioning<sup>203</sup> are included within this category. More formal reflective writing in the 2011 cohort is revealed because of the prescriptive criteria rubric. Students are instructed to reflect on ethical professionalism in greater detail than the 2009 cohort about the

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<sup>198</sup> Journal 1; Journal 18; Journal 22; Journal 57; Journal 64; Journal 71.

<sup>199</sup> Ibid.

<sup>200</sup> Journal 1; Journal 74.

<sup>201</sup> Code 15; Code 18; Code 25.

<sup>202</sup> Code 15.

<sup>203</sup> Code 18.

operations of the courtroom and the manner in which lawyers conduct themselves. They are invited to project about what kind of practitioners they wish to be and whether they are able to handle the stress and pressure of the work in the future. This category also encompasses the nuances of cultural differences and the impact reflections on culture have on students.<sup>204</sup> These students discuss and reflect upon their cultural heritage and the legal system from their culture in ways that are most persuasive.<sup>205</sup>

#### *H Category 8: Discusses the Value of Journaling*<sup>206</sup>

This category clearly indicates how the 2011 cohort of students value reflective journaling as an important aspect of their personal and professional development. The students value journaling and journaling guidance. Their responses are directly relevant to inclusion within the category.<sup>207</sup> This category consists of varied appreciation of the value of journaling. Some students appreciate journaling, some do not and some change their views. The format of the journaling of this cohort of students tends to be more formal than the 2009 cohort given that they are guided by a criteria rubric. They do not draw upon poetry or artwork despite the criteria provided in the journaling guide allowing them to so.

### V DOMINANT THEMES OF THE DATA: COMPARING THE 2009 AND 2011 DATA

Table 6 and Table 7 outline the dominant themes, which emerge from the patterns of the categories of both 2009 and 2011.

**TABLE 5: Themes Constructed from Categories: 2009 data**

<b>2009 Themes</b>	<b>2009 Categories</b>
Student engagement with the teaching and learning environment	1, 2
What students value in terms of the learning environment	5, 6, 7, 9, 10, 11
Student perspectives of the legal profession, ethics and professionalism	8, 14
Student perspectives of assessment	3, 4
Student reflection (including own learning)	11, 12, 13, 15

**TABLE 6: Themes Constructed from Categories: 2011 data**

<b>2011 Themes</b>	<b>2011 Categories</b>
Student engagement with the teaching and learning environment	1, 2
What students value in terms of the learning environment	3, 5, 6, 7, 8
Student perspectives of the legal profession, ethics and professionalism (including reflection)	5
Students awareness and responsibility for learning	4

<sup>204</sup> Code 25.

<sup>205</sup> Journal 19; Journal 36; Journal 77.

<sup>206</sup> Code 35; Code 36.

<sup>207</sup> Ibid.

## VI CONCLUSION

The use of constructivist grounded theory approach outlines the method of interpretation and provides a transparent view of the analytic processes used to examine the data. Such a technique provides methodological credibility. Outlining the steps taken to convert numerous multiple variables to more informative categories also reveals dependability.

The fifteen categories of the 2009 cohort of students are significant because they reveal the multiple themes students reflect upon, particularly when they are given only limited guidance and instruction on what they are to write about. The eight categories of 2011 show that the students are likely to be more specific with their writing, writing about topics on the assessment criteria rubric guidelines.<sup>208</sup> This is important because it shows the potential that assessment guidelines have in directing students in relation to their writing. It provides a technique for educators to consider if they want to direct students to specific topics of reflection. The 2011 students directed to write about ethics and professionalism, wrote about these topics in more detailed ways than the 2009 cohort. The reason why they were directed to do so was because the analysis of the 2009 categories allowed the researcher to distil and refine the learning approaches in ways that lead to a richer, reflective and deeper engagement with ethics. The main reason for the differences between the 2009 cohort and the 2011 cohort stemmed from the interventionist strategies used by the researcher in the teaching the 2011 cohort.

This research has demonstrated that greater instruction, more guidance with journaling and additional activities associated with reflection result in improved critical reflection, at least with the majority of the student cohort.<sup>209</sup> However, it needs to be noted that this improvement is not the case for all students. Whilst it was assumed that the 2011 students engage with the instructions in the printed material, it appears that in some cases, students did not follow the instructions given in the lectures or read or follow the material provided in the guide.<sup>210</sup>

The 2011 criteria rubric directed students to critically reflect on ethics, professionalism and their own learning.<sup>211</sup> The levels of critical reflection expected are more explicit in terms of the assessment grade. Generally the journals from the 2011 cohort show a wider perspective and understanding of the course than the 2009 cohort.<sup>212</sup> Some 2011 students are able to

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<sup>208</sup> See Appendix 1; Appendix 2.

<sup>209</sup> See, eg, Chapter 8 II D; Chapter 8 III.

<sup>210</sup> See Appendix 1. The journaling guide instructed the students not to denigrate the defendants yet a number of journals showed unprofessional language.

<sup>211</sup> Appendix 2.

<sup>212</sup> Chapter 8 II C; Chapter 8 II D; Chapter 8 III-V.

examine ethics at multiple levels including individual, institutional, cultural and societal levels in ways not undertaken by the 2009 students.<sup>213</sup> This exhibits a wider, deeper contextual understanding of the concepts often recognised as an indicator of higher levels of critical reflection.<sup>214</sup> The impact of the criteria rubric, informed by the literature, indicated that criteria rubrics assist students with both the form of the journal and its assessment. When legal researchers use journaling linked with an interventionist approach, their research provides law educators with valuable pedagogical techniques. In the case of this thesis, these techniques include increasing the utilisation of guest lecturers, providing guidance and instruction for critical reflection and the creation of a supportive learning environment to encourage engagement.

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<sup>213</sup> Chapter 8 II C.

<sup>214</sup> Ibid.

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# CHAPTER 8: LEGAL PEDAGOGICAL DISCOURSES CONSTRUCTED FROM REFLECTIVE JOURNAL TEXTS OF FOUNDATION LAW STUDENTS

## I INTRODUCTION

The chapter begins with a brief overview of the academic literature on engagement with first year legal education, which informs the discourse analysis. It compares and contrasts discourses constructed from foundation law students' reflective journals<sup>1</sup> in LAW121 at UTAS in 2011 and 2009. The discourses reveal what forms of legal pedagogy engage and influence the foundation students within the 2009 and 2011 cohorts. Using constructivist grounded theory, discourses are constructed from the dominant themes.<sup>2</sup> Four themes<sup>3</sup> inform the construction of the 2011 discourses. Five discourses for the 2011 cohort include student engagement, court experience, thinking like a lawyer, ethics and judgement. Six discourses are constructed from the five themes of the 2009 cohort. These discourses are similar to the 2011 discourses and include engagement, court experience, popular culture, improvement, analysis and judgement.

## II OVERVIEW OF THE ACADEMIC LITERATURE: ENGAGEMENT WITH FIRST YEAR LEGAL EDUCATION

Legal academics argue that engagement generates high quality learning in first year law students and facilitates student transition to university, success, satisfaction and persistence.<sup>4</sup> Engagement is linked with learning and students' motivation to learn,<sup>5</sup> with legal education literature noting the positive effect that meaningful staff, student and group interactions can have on student learning.<sup>6</sup> Legal education literature acknowledges that first year law students

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<sup>1</sup> 2011 journals come from Hobart, Launceston and Cradle Coast campuses. 2009 journals come from the Hobart campus.

<sup>2</sup> Kathy Charmaz, *Constructing Grounded Theory* (Sage, 2006); Kathy Charmaz, 'A Constructivist Grounded Theory Analysis of Losing and Regaining a Valued Self' in Frederick Wertz et al (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (Guilford Press, 2011); Kathy Charmaz, 'Grounded Theory Methods in Social Justice Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> edition, 2011). Chapter 7 explains constructivist grounded theory and applies constructivist grounded theory to this research.

<sup>3</sup> Chapter 7, Table 6.

<sup>4</sup> Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011); Paula Baron and Lillian Corbin, 'Thinking Like a Lawyer/Acting like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education' (2012) 46 *The Law Teacher* 100.

<sup>5</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw-Hill, 2011) 6, 33-34, 36, 38, 43, 54; Susan Armstrong and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 229-230; Claire Macken, 'Law Student Engagement: The Curricular and Co-Curricular Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 312-335; Michael Robertson, 'Embedding 'Ethics' in Law Degree' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 99.

<sup>6</sup> Jeff Giddings, 'Teaching the Ethics of Criminal Law and Practice' (2001) 35 *Law Teacher* 161; Marlene Le Brun et al, 'Producing Multi-Media Teaching/Learning Materials for Teaching Legal Ethics and Professional Responsibility in Australian Law Schools: And the Lesson is...Soldier on' (2001) 12 *Legal Education Review* 157;

can be anxious about law school,<sup>7</sup> showing this can be ameliorated through a supportive teaching and learning environment and reflective practice.<sup>8</sup> Social connectivity as a foundation for student engagement and learning is recognised in the legal education literature.<sup>9</sup> Academic literature further argues that positive attitudes from educators are engaging<sup>10</sup> and that students tend to be happier when there is interaction between teacher and students, which involves enthusiastic support from educators.<sup>11</sup>

The academic literature supports the proposition that a variety of pedagogical techniques, including the use of guest lecturers, enhance student reflection and learning.<sup>12</sup> Real life experiences including court experiences tend to be most engaging, high impact activities to promote student connections with future careers.<sup>13</sup> They afford students the opportunity to compare real life with popular cultural portrayals of the legal profession. Popular culture can

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Suzette Barnaby, 'Legal Ethics for the Real World: A Model for Engaging First Year Law Students' (2004) 4 *Queensland University of Technology Law and Justice Journal* 219; Julie Pastella and Kay Maxwell, 'Teaching Ethics and Professionalism' (Paper presented The Inaugural Pacific Rim - First Year in Higher Education Conference: Dealing with Diversity, Monash University, Melbourne, 14-16 July 2004); Margaret Castles, Maureen Goldfinch and Anne Hewitt, 'Using Simulated Practice to Teach Legal Theory. How and Why Skills and Group Work Can Be Incorporated Into The Academic Legal Curriculum' (2007) 26 *University of Tasmania Law Review* 120; Neil Hamilton and Lisa Montpetit Brabbit, 'Fostering Professionalism through Mentoring' (2007) 57 *Journal of Legal Education* 102; Mary Lu Bilek, 'First Year Orientation,' *International Forum of Teaching Ethics and Professionalism* <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Linda Crowley-Cyr, 'Reflexive Professionals or Disempowered Technicians? A Case Study of the Risks of Mc Learning in a Regional Law School' (2008) 1 *Journal of the Australasian Law Teachers Association* 299; Nancy Cook, 'Story Exchange Exercise, *International Forum of Teaching Ethics and Professionalism* <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Deborah Rhode, 'Teaching Legal Ethics' (2006-2007) 51 *Saint Louis University Law Journal* 1043; Claire Macken and Madeleine Dupuche, *Law Essentials: Foundations in Australian Law* (LawBook Co, 2012); Robertson in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 114; Michael Mushin and Lisa Smith, 'The Professor and the Judge: Introducing First-Year Students to the Law in Context' (2014) 63 *Journal of Legal Education* 480; Armstrong and McNamara in Kift, above n 4, 231; Baron and Corbin, above n 4.

<sup>7</sup> Natalia Antolak-Saper, Lloyd England and Anthony Lester, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36 *Alternative Law Journal* 47; Kath Hall, Molly Townes O'Brien and Stephen Tang, 'No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One' (2011) 2 *International Journal of First Year in Higher Education* 49; Nikolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 46.

<sup>8</sup> James and Field, above n 7, 353-358; Penelope Watson and Rachael Field, 'Promoting Student Well-Being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 390, 411, 419.

<sup>9</sup> James and Field, above n 7; Macken in Kift, above n 4; Kate Galloway et al, 'Approaches to Student Support in the First Year of Law School' (2011) 21 *Legal Education Review* 235; Wendy Larcombe and Ian Malkin, 'The JD Experience-Design Issues and Strategies' (2011) 21 *Legal Education Review* 1; Tani Massimiliano and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession' (2009) 19 *Legal Education Review* 31.

<sup>10</sup> Mark Minott, 'Valli's Typology of Reflection And Analysis of Pre-Service Teachers' Reflective Journals' (2008) 33 *Australian Journal of Teacher Education* 55; Snadden et al, 'Portfolio-based Learning and General Practice Vocation Training' (1996) 30 *Medical Education* 148.

<sup>11</sup> Armstrong and McNamara in Kift et al, above n 4; Nikki Bromberger, 'Enhancing Law Student Learning-The Nurturing Teacher' (2010) 20 *Legal Education Review* 45.

<sup>12</sup> Marion Swindell and Joshua Watson, 'Teaching Ethics through Self-Reflective Journaling' (2006) 3 *Journal of Social Work Values and Ethics* <<http://www.socialworker.com/jswwv/content/view/37/46/>>; Harriet Katz, 'Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools,' (2008) 59 *Mercer Law Review* 909; Martin Haigh, 'Constructing Gaia: Using Journals to Foster Reflective Learning' (2001) 25 *Journal of Geography in Higher Education* 167; Macken in Kift et al, above n 5, 328; John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (McGraw Hill, 4<sup>th</sup> ed, 2011) 5-6.

<sup>13</sup> Macken, above n 5, 328.

create expectations about what it is like to be a lawyer.<sup>14</sup> Many students' initial views of what it is to be a lawyer are constructed through the influential lens of popular culture. Popular cultural narratives have the potential to encourage students to be self-reflective about their ethical identity.<sup>15</sup> Reflection in journals creates portraits of ethical professionalism from popular culture allows the opportunity for students' views to be constructed and refined. Literature on reflective journaling also shows the benefits of a student-centred learning environment, with a number of interdisciplinary studies taking that focus.<sup>16</sup> It also shows that engagement with and potentially improving reflective journaling can occur with practice over time, which is supported in the previously examined multi-disciplinary studies.<sup>17</sup>

### III DISCOURSE OF STUDENT ENGAGEMENT: 2011 AND 2009

#### *A Coping with First Year Transitions: Making Positive Social Connections*

Both 2011 and 2009 cohorts acknowledge that coping with the first year transition to law school subjects can be improved with the assistance of a supportive environment created through bonding between peers and educators within tutorial groups. 2009 students of different ages report the transition to university as challenging, recognising that different levels of learning are necessary for university study.<sup>18</sup> Anxiety about the anticipated university experience, evident within both cohorts at the beginning of semester,<sup>19</sup> are frequently transformed over time to feelings of engagement, through positive interactions with a variety of educators and students.

In the 2011 cohort the language of the students recognises social interaction and the corresponding benefits of its relationship with engagement and learning.<sup>20</sup> Social connections develop from working with others.<sup>21</sup> 'Tutorials were the highlight of my week ... coming from interstate to a new city with no friends whatsoever, law tutorials were particularly helpful in making the transition a little less awkward'.<sup>22</sup> The 'comfortable ambiance'<sup>23</sup> of the

<sup>14</sup> James and Field, above n 7; Sally Kane, *5 Myths Regarding the Practice of Law* (2012) <<http://legalcareers.about.com>>.

<sup>15</sup> Robertson et al, above n 5, 22.

<sup>16</sup> Chapter 5 reveals nine reflective journaling studies endorsing a student-centred approach in seven disciplines of social work, law, education, nursing, accounting, management and tourism.

<sup>17</sup> See, eg, Ian Beveridge, 'Teaching your Students to Think Reflectively: The Case for Reflective Journals' (1997) 2 *Teaching in Higher Education* 33; Annetta Tsang, 'Oral Health Students as Reflective Practitioners: Changing Patterns of Clinical Reflections over a period of 12 month' (2012) 86 *The Journal of Dental Hygiene* 120.

<sup>18</sup> Journal 4; Journal 6; Journal 26.

<sup>19</sup> Susan Armstrong, Marnie Campbell and Michael Brogan, 'Interventions to Enhance the Experience of a First Year Law Degree: What They Really Wanted' (2009) 2 *Journal of the Australasian Law Teachers Association* 135, Chapter 7 IV A; Chapter 7 IV F.

<sup>20</sup> See, eg, Journal 4; Journal 24; Journal 44; Journal 74; Journal 61.

<sup>21</sup> See, eg, Journal 5; Journal 7; Journal 61.

<sup>22</sup> Journal 5.

<sup>23</sup> Journal 74.

tutorial group was ‘like visiting a friend and a discussion over a cup of tea and a biscuit’.<sup>24</sup> Similarly, in 2009 the language shows excitement about positive interaction with tutorial peers: for instance, ‘tutorials are really fun! I really enjoy waking up and making my way to UTAS because I know it is like a catch up with some of my friends and good to talk about our legal issues’.<sup>25</sup>

The 2011 students, like their 2009 counterparts, are inspired by the experience,<sup>26</sup> passion,<sup>27</sup> friendliness<sup>28</sup> and energy<sup>29</sup> of educators.<sup>30</sup> Some students’ language reveals gratitude:<sup>31</sup> ‘I am so thankful to my tutor ... it was so great to have someone hands on, who facilitated our learning and made us want to be there’.<sup>32</sup> The 2011 students show greater indebtedness for course delivery than the 2009 students given that they are directed to identify techniques that assist with their learning. The 2009 cohort seem to focus more on admiration of the skill of the presenter.<sup>33</sup> Gratitude is more evident in the 2011 cohort than the 2009 cohort.<sup>34</sup> This may be explained in part by the fact that the 2011 students were provided with a criteria rubric in encouraged them to demonstrate gratitude to the markers of the work. This position has been recognised in the literature on reflective journaling where some studies have found that students write for the assessor.<sup>35</sup>

### *B Variety with Course Delivery: Guest Lecturers and Lecture Topics*

Both the 2011 and the 2009 cohorts enjoy a variety of methods of course delivery, including guest lecturers discussing real legal practice experiences.<sup>36</sup> The 2011 students tend to provide greater analysis about reasons for engagement whereas the 2009 students instead tend to comment on what they like. Favourite 2009 lecture topics include lectures about ‘specific individuals’,<sup>37</sup> ‘those about the legal profession’<sup>38</sup> and ‘dispute resolution’.<sup>39</sup> The 2011 comments are more reflective: for instance, ‘The guest lecturers were a treat’,<sup>40</sup> ‘The diverse

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<sup>24</sup> Ibid.

<sup>25</sup> Journal 24; See also Chapter 7 III B; Chapter 7 III F.

<sup>26</sup> Journal 4; Journal 24.

<sup>27</sup> Journal 4; Journal 10.

<sup>28</sup> Journal 54.

<sup>29</sup> Journal 58.

<sup>30</sup> Journal 17; Journal 22; Journal 32; Journal 34; Journal 50; Journal 51; Journal 54.

<sup>31</sup> Journal 4; Journal 43; Journal 60.

<sup>32</sup> Journal 1.

<sup>33</sup> Journal 24.

<sup>34</sup> Journal 45; Journal 53; See, eg, Chapter 7 IV G.

<sup>35</sup> Janet Dymont and Timothy O’Connell, ‘Effects of a Workshop on Perceptions of Journaling in Outdoor Education Field Courses: An Exploratory Study’ (2003) 26 *The Journal of Experiential Education* 75; Snadden et al, above n 10.

<sup>36</sup> Journal 2; Journal 24; Journal 39; Journal 50; Journal 63; Chapter 7 III A; Chapter 7 III G; Chapter 7 IV A; Chapter 7 IV B.

<sup>37</sup> Journal 5.

<sup>38</sup> Journal 2.

<sup>39</sup> Journal 13.

<sup>40</sup> Journal 69.

approach of the staff ... encourages you to be passionate about learning',<sup>41</sup> 'I particularly enjoyed having many different speakers, with their own specialties and approaches to learning',<sup>42</sup> 'I like some lecturing styles ... when lecturers speak about their own experiences and stories'.<sup>43</sup> They value honesty about the professional practice of law from 'real world'<sup>44</sup> guest lecturers,<sup>45</sup> with real stories from legal practice.<sup>46</sup>

I believe the lectures on the lawyers, the legal profession and legal education are an important aspect of a first year's course. It is essential that early on in a student's career that they understand what the profession is really like ... straight shooting about what it was really like to be a lawyer.<sup>47</sup>

The academic literature also supports the use of guest lecturers from the profession assisting students to make connections between their learning and the real world of legal practice, for engagement and preparation for future careers.<sup>48</sup>

The 2011 student comments reveal lectures topics they most enjoy,<sup>49</sup> find engaging,<sup>50</sup> interesting<sup>51</sup> and entertaining.<sup>52</sup> Such topics are rarely disliked unless they misalign with students' preferred way of learning,<sup>53</sup> such as 'learning best by reading'.<sup>54</sup> A number of students within the 2011 cohort like interactive lectures, problem solving or thinking like a lawyer.<sup>55</sup> This may either reflect the desire to connect with the legal profession or engagement with interacting in class for the purposes of effective learning.<sup>56</sup> By contrast the 2009 cohort indicate differences. They are particularly engaged by techniques to improve their grades through feedback: 'I had improved since my first one!!! ... I was really happy with the feedback ... I may do this section in the exam ... so long as I can critically and analytically give reasons for my decision'.<sup>57</sup>

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<sup>41</sup> Journal 50.

<sup>42</sup> Journal 63; Journal 76.

<sup>43</sup> Journal 35.

<sup>44</sup> Journal 4.

<sup>45</sup> See eg, Journal 3; Journal 4; Journal 5; Journal 15.

<sup>46</sup> Above n 45.

<sup>47</sup> Journal 3.

<sup>48</sup> Rachael Field, 'Promoting Law Student's Well-being Through the Curriculum' (Final Report on Stimulating Strategic Change in Legal Education to address High Levels of Psychological Distress in Law Students 2014) <[http://eprints.qut.edu.au/75519/1/Field\\_R\\_NTF\\_report\\_2014\\_.pdf](http://eprints.qut.edu.au/75519/1/Field_R_NTF_report_2014_.pdf)> 33; James and Field, above 7; Macken, above n 5, 328.

<sup>49</sup> Journal 15; Journal 22; Journal 27; Journal 28; Journal 40; Journal 63; Journal 67; Journal 70; Journal 77.

<sup>50</sup> Journal 1; Journal 4; Journal 16; Journal 34; Journal 51; Journal 58.

<sup>51</sup> Journal 2; Journal 3; Journal 5; Journal 6; Journal 13; Journal 15; Journal 35; Journal 41; Journal 44; Journal 46; Journal 47; Journal 48; Journal 50; Journal 52; Journal 54; Journal 56; Journal 65; Journal 76.

<sup>52</sup> Journal 2; Journal 3; Journal 23.

<sup>53</sup> Journal 53.

<sup>54</sup> Journal 53; Journal 60.

<sup>55</sup> Chapter 7 IV C; Journal 3; Journal 4; Journal 9; Journal 14; Journal 21 Journal 55; Journal 66.

<sup>56</sup> Caroline Hart et al, 'The Real Deal: Using Authentic Assessment To Promote Student Engagement in the First and Second years of a Regional Law Program' (2011) 21 *Legal Education Review* 97.

<sup>57</sup> Journal 6; See also Chapter 7 III E.

Legal education literature recognises that legal pedagogy needs to be diverse in terms of delivery of different types of lectures and pedagogical techniques in order to cater for more diverse student groups in terms of backgrounds, needs and experiences as they progress through law schools.<sup>58</sup>

#### IV DISCOURSE OF COURT EXPERIENCE: 2011 AND 2009

The discourse of court experience shows that the students are significantly influenced and engaged by the real life court experiences. The 2011 students' comments show the judiciary and the court as powerful forces in the students' learning environment.<sup>59</sup> Like the 2009 students, 2011 students desire their court experience to be entertaining and engaging.<sup>60</sup> The 2011 students frequently use the court experience to examine whether there is access to social justice.<sup>61</sup> Students recognise that defendants struggle to access justice without legal representation.<sup>62</sup> The lower court is questioned as a 'conveyor belt for churning out purported justice'.<sup>63</sup>

Students also critically evaluate and judge the roles of the professionals or institutions (such as juries) in court.<sup>64</sup> Some students are critical of underprepared, disorganised professionals or those who make procedural mistakes.<sup>65</sup> Others criticise individuals perceived as disinterested, angry or rude.<sup>66</sup> By contrast, a significant number of students praise legal advocates who show respect, courtesy, efficiency, versatility, organisational skills and knowledge of the law.<sup>67</sup> Some of these students evaluate court experiences by examining the value of respect.<sup>68</sup> They are sometimes shocked or disappointed with any individual, whose behaviour lacks respect, particularly in the Magistrates' Court.<sup>69</sup>

The 2011 foundation law students are engaged and value these court experiences describing them in a variety of ways including fascinating, very entertaining, inspiring and depressing.<sup>70</sup> They reflect on ethical issues, such as representing those who are guilty and social justice

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<sup>58</sup> Armstrong and McNamara, above n 5, 208, 221.

<sup>59</sup> Journal 10; Journal 12; Journal 26; Journal 69; Journal 71.

<sup>60</sup> See, eg, Journal 2; Journal 9; Journal 11; Journal 33; Journal 39; Journal 54; Journal 71.

<sup>61</sup> Journal 2; Journal 3; Journal 17; Journal 18; Journal 20; Journal 22; Journal 27; Journal 28; Journal 34; Journal 38; Journal 40; Journal 42; Journal 43; Journal 44; Journal 46; Journal 55; Journal 57; Journal 59; Journal 61; Journal 64; Journal 66; Journal 68; Journal 70; Journal 74.

<sup>62</sup> Ibid.

<sup>63</sup> Journal 17.

<sup>64</sup> Journal 1; Journal 3; Journal 5; Journal 6; Journal 7; Journal 9; Journal 17.

<sup>65</sup> Journal 1; Journal 2; Journal 17; Journal 54; Journal 58; Journal 67.

<sup>66</sup> Journal 6; Journal 12; Journal 40; Journal 45; Journal 49; Journal 73.

<sup>67</sup> Journal 4; Journal 7; Journal 14; Journal 24; Journal 26; Journal 27; Journal 28; Journal 33; Journal 48; Journal 61; Journal 64.

<sup>68</sup> Journal 1; Journal 3; Journal 4; Journal 21; Journal 35; Journal 60; Journal 73; Journal 76.

<sup>69</sup> Journal 3; Journal 35; Journal 60.

<sup>70</sup> See, eg, Journal 3; Journal 7; Journal 10; See also Chapter 7 IV B.

issues, such as the ‘inequalities of the legal system when people lack representation’.<sup>71</sup> Many of the 2011 students transform their perspectives upon reflection.<sup>72</sup> Similarly, 2009 students are transformed by the real life observations and experiences in court.<sup>73</sup> ‘Initially I was sceptical as to the value of court visits, but they offered a very real insight into the functioning of the legal profession, and were a valuable way to understand the theory we had been learning’.<sup>74</sup>

Comparisons between the lower and higher courts are as frequent in the 2011 data as in the 2009 data.<sup>75</sup> Similarly, within the 2011 data comparisons are made in relation to the formality of the Supreme Court compared with the informality of the Magistrates’ Court.<sup>76</sup> Within both cohorts, there tends to be greater engagement with the formality of the Supreme Court over the informality of the Magistrates’ Court. This is interesting in that both cohorts make comparisons between the two courts without any direction from their legal coursework to do so. It may be that the two courts are so different and that the experience of the courts allows the students to reflect critically on the difference between them, or that they may simply like to discuss these differences as part of evaluating the legal system.

The 2011 students’ language describes the court experience<sup>77</sup> as a ‘rich’<sup>78</sup> and ‘most worthwhile’<sup>79</sup> learning experience. Their comments include, ‘after my first court experience I became more comfortable with the law course and began to thoroughly enjoy it ... it almost instantly became my favourite course’.<sup>80</sup> Phrases describing court such as ‘the most exciting element of the course’,<sup>81</sup> ‘life-changing’<sup>82</sup> or ‘one of the most liberating and valuable experiences’<sup>83</sup> are found within the comments. For many students in the 2011 cohort it was a highlight of the semester,<sup>84</sup> stimulating one student to do whatever he ‘must do in order to get on the path to becoming a lawyer’.<sup>85</sup> The 2011 students use more positive language about court experiences than the 2009 cohort. One reason for this eagerness to attend court might be

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<sup>71</sup> Journal 17.

<sup>72</sup> Journal 1; Journal 7; Journal 31; Journal 66; See also Chapter 7 IV F.

<sup>73</sup> Journal 11; Journal 28.

<sup>74</sup> Journal 15.

<sup>75</sup> Journal 17; Journal 19; Journal 21; Journal 40; Journal 42; Journal 43; Journal 46; Journal 47; Journal 49; Journal 54; Journal 55; Journal 57; Journal 60; Journal 61; Journal 70.

<sup>76</sup> Ibid.

<sup>77</sup> Journals 1; Journal 2; Journal 3; Journal 4; Journal 6; Journal 8; Journal 13; Journal 16; Journal 23; Journal 26; Journal 29; Journal 34; Journal 37; Journal 41; Journal 47; Journal 50; Journal 63; Journal 65; Journal 66.

<sup>78</sup> Journal 72.

<sup>79</sup> Journal 13.

<sup>80</sup> Journal 72.

<sup>81</sup> See, eg, Journal 55; Journal 72.

<sup>82</sup> Journal 31.

<sup>83</sup> Journal 50.

<sup>84</sup> See, eg, Journals 2; Journal 3; Journal 5; Journal 72; Journal 55.

<sup>85</sup> Journal 72; See also Chapter 7 IV B.

explained by the fact the 2011 criteria rubric focuses on the court system.<sup>86</sup> The 2011 students also provide more evidence to support their opinions and judgments about engagement than the 2009 cohort. They evaluate the reasons for preferring one court to another court, such as that the slower pace of the Supreme Court gives more time to absorb and understand the legal language.<sup>87</sup> Students also relate to Supreme Court judges and juries and explain that this encourages them to relate theory with practice, an advantage, which is well recognised in academic literature.<sup>88</sup> Nevertheless, the 2009 students also value the court experience as demonstrated in the following excerpt:

The law is like Lewis Carroll's Wonderland, nothing is, as it seems. We can be fed information at University in regards to the legal profession but nothing is going to equip us for the real legal world. The best we can do is make ... court visits, to see how the things we learn in the lecture theatre are applied in real life.<sup>89</sup>

A small number of 2011 students do not like some court experiences<sup>90</sup> because of either the lack of respect shown by court participants,<sup>91</sup> feelings of awkwardness,<sup>92</sup> depressing issues,<sup>93</sup> and 'long, tiresome,'<sup>94</sup> 'slow and tedious'<sup>95</sup> proceedings. When students do not understand court proceedings many are disappointed. Some of the language is revealing, one student remarking that '[i]t was the most boring hour of my life. I could not understand what anyone was saying'.<sup>96</sup> The lack of a variety of court experiences could be explained by the fact that students attend court in their own time, which may have been limited. Alternatively, a foundation year student may not understand legal jargon in court, reinforcing the need for guidance and instruction, from educators, as is recognised in the literature.<sup>97</sup>

This discourse also reveals that the 2009 students do not always comment in the most ethical manner about defendants in court, with some making inappropriate comments.<sup>98</sup> This may be because the students link professionalism with formality, with many defendants not dressing to the formal standards the students impose upon them. Students are impressed with formality as indicative of professionalism. Formal dress is connected with respect and preferred to

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<sup>86</sup> Appendix 2.

<sup>87</sup> Journal 17.

<sup>88</sup> See, eg, Macken, above n 5, who promotes students visiting law court so that they can experience legal and ethical issues that relates to court, 328; Jennifer Varzaly, 'Important Role of Practical Legal Education: Masters Students Visit SA Courts' (2011) 33 *Bulletin of the Law Society of South Australia* 26.

<sup>89</sup> Journal 7.

<sup>90</sup> See, eg, Journal 2; Journal 9; Journal 11; Journal 33; Journal 39; Journal 54; Journal 71.

<sup>91</sup> Journal 39.

<sup>92</sup> Journal 2; Journal 33; Journal 54.

<sup>93</sup> Journal 33; Journal 39.

<sup>94</sup> Journal 71.

<sup>95</sup> Journal 2.

<sup>96</sup> Journal 11.

<sup>97</sup> James and Field, above n 7, 359, 362; Jane Parent and Kathi Lovelace, 'Creating a Learning Organization in the Management Classroom through Dialogue and Reflective Journaling' (2011) 6 *Business Renaissance Quarterly* 21; Tsang, above n 17.

<sup>98</sup> Journal 12; Journal 18; See also Chapter 7 III H; Chapter 7 III I.



casual attire. Students' written analysis about this area is evident. 'Wigs and gowns show traditionalism, seriousness and strictness'.<sup>99</sup> Many students prefer the formality of the Supreme Court to the Magistrates' Court. Similarly, a 2011 student notes her disappointment at the 'profound lack of formality'<sup>100</sup> and her surprise at the informality of the defendant's casual dress. Further, some 2011 students consider the slow pace of the court as contributing towards a more professional yet sometimes 'boring and dull environment'.<sup>101</sup>

Legal education literature also supports that view that court observations are excellent reflective and stimulating experiences or activities for students.<sup>102</sup> Courtroom experiences allow reflection on and engagement with legal issues including ethical and social justice issues.<sup>103</sup> Such 'high impact'<sup>104</sup> educational activities can prepare law students for their future careers.<sup>105</sup>

## V DISCOURSE OF POPULAR CULTURE

There is no discrete discourse of popular culture in the 2011 cohort, however, this issue is addressed in their comments on their court experiences. The 2011 cohort do not direct attention to popular culture in their language as frequently as the 2009 cohort. This is likely to be because the 2011 students are not directed to address popular cultural issues in the criteria rubric for their journal assessment. The 2011 students take a more strategic approach to evaluation and analysis than the 2009 students because they are directed to do so. When the court experiences of the 2011 students are compared to those of the 2009 students, it is evident that the concerns of the 2011 students are primarily confined to the topics of their assessment criteria rubric. Nevertheless the 2011 students are still heavily influenced by popular culture,<sup>106</sup> including television programs,<sup>107</sup> books and films.<sup>108</sup>

Some 2011 students are interested in the same types of popular culture as the 2009 students. *Law and Order*,<sup>109</sup> *Boston Legal*<sup>110</sup> and *Judge Judy*<sup>111</sup> or movies like *Legally Blonde*<sup>112</sup> are

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<sup>99</sup> Journal 40; Journal 46.

<sup>100</sup> Journal 18.

<sup>101</sup> Journal 40; Journal 41.

<sup>102</sup> Karen Hinnett and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002) 3; Macken, above n 5, 325, 328, [12.30]; Crowley Cyr, above n 6; Giddings, above n 6.

<sup>103</sup> Ibid.

<sup>104</sup> Macken, above n 5, 325, 328.

<sup>105</sup> Ibid.

<sup>106</sup> Journal 40; Journal 42; Journal 62.

<sup>107</sup> Journal 6; Journal 31; Journal 32; Journal 34; Journal 35; Journal 37; Journal 39; Journal 56; Journal 58; Journal 61; Journal 63; Journal 64; Journal 70.

<sup>108</sup> Journal 12; Journal 19; Journal 31; Journal 32; Journal 37; Journal 39; Journal 63.

<sup>109</sup> Journal 19; Journal 22; Journal 32; Journal 44; Journal 55.

<sup>110</sup> Journal 19; Journal 22; Journal 25; Journal 34; Journal 39; Journal 55; Journal 58; Journal 61; Journal 63; Journal 64; Journal 65; See also Chapter 7 IV B.

<sup>111</sup> Journal 25.

<sup>112</sup> Journal 31; Journal 33; Journal 55; Journal 63.

examples of influential television series for both the 2009 and 2011 students. Like the 2009 students, many 2011 students notice the contrast between popular culture and real life, as observed in the courtroom, for instance noting that real life characters may not be as flamboyant as those on television or that the court is set up differently with different procedures.<sup>113</sup> A few students note similarities between the traits of lawyers on television and real life court observations.<sup>114</sup> Others evaluate the unethical, overly glamourised or unrealistic portrayals of lawyers in popular culture with court observations.<sup>115</sup> In the academic literature negative perceptions of lawyers in popular culture have also been recognised.<sup>116</sup>

The 2011 students compare and contrast their ethical perspectives of the participants in court with their own perceptions of legal identities, which are frequently influenced by popular culture.<sup>117</sup> A 2011 student shows that ‘judge emanated respect and referee like qualities over the matters presented’<sup>118</sup> unlike what he had learned from popular culture. Another student expresses surprise through the use of the phrase ‘so softly spoken’<sup>119</sup> nature of the defence lawyer as compared with the nature of the characters in television shows such as *Judge Judy*.<sup>120</sup> By contrast, another student in this cohort is very impressed by the professionalism of the lawyers in court, using language, which describes the lack of emotion, calmness, organisation and structured approach in the courtroom and comparing it to the ‘hot-shot’<sup>121</sup> approach of American television legal programmes.

The 2009 students also discuss the court environment and legal professionalism. Some in this cohort simply describe what they find professional and what they do not. Generally they do not give detailed reasons for this. ‘I thought it was strange that an officer of the court brought a young girl into court and sat her down before everyone left. I did not think that this was very professional at all’.<sup>122</sup> Another student did not believe it was professional for a court officer to scratch at her skin with a bored expression on her face.<sup>123</sup> One 2009 student uses strong language to express dislike of popular cultural television shows and describes them as ‘patently ludicrous’<sup>124</sup> and ‘unrealistic’.<sup>125</sup> She adds that the real life court environment was

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<sup>113</sup> Journals 4; Journal 6; Journal 14; Journal 21; Journal 22; Journal 23; Journal 25; Journal 31; Journal 32; Journal 34; Journal 39; Journal 40; Journal 44; Journal 62; Journal 63; Journal 65.

<sup>114</sup> See, eg, Journals 45; Journal 55.

<sup>115</sup> Journal 19; Journal 34; Journal 42; Journal 43; Journal 55; Journal 56; Journal 61; Journal 68.

<sup>116</sup> See Chapter 2; Editorial, ‘The Greed of Lawyers’ *Sydney Morning Herald* (Sydney), 30 August 1997; Cassandra Sharp, ‘Changing the Channel-What to do with the Critical Abilities of Law Students as Viewers’ (2004) 13 *Griffiths Law Review* 185.

<sup>117</sup> Journal 2; Journal 3; Journal 5; Journal 14; Journal 17; Journal 18; Journal 22; Journal 42; Journal 72.

<sup>118</sup> Journal 72.

<sup>119</sup> Journal 2.

<sup>120</sup> Journal 25.

<sup>121</sup> Journal 14.

<sup>122</sup> Journal 28; See also Chapter 7 III G; Chapter 7 III K.

<sup>123</sup> Journal 71.

<sup>124</sup> Journal 30.

intimidating and ‘certainly nothing like *Boston Legal*’.<sup>126</sup> She writes ‘I felt so uncomfortable that I didn’t stay for long’.<sup>127</sup> She does not explain why this was so. Students also like to critically analyse law firms and the profession.<sup>128</sup> The following student’s comment refers to popular culture in an analysis of the ethical professionalism of modern legal practice:

Contemporary law firms tend to adopt a rigid and out dated hierarchy, which allows the senior practitioners to bully and exploit junior practitioners. The traditional relationship of master and disciple (i.e. Denny Crane and Alan Shore) is long gone. Today’s disillusioned junior lawyers often suffer from excessive workload, low salary and lack of recognition.<sup>129</sup>

These first year students discuss ethical issues. Two examples of this follow, ‘Last night I hired and watched ‘*Serving Sarah*’ ... The lawyer stereotype is fulfilled as the lawyer acts extremely unethically to make money off his client’.<sup>130</sup> Further, in the BBC production of *Bleak House*<sup>131</sup> another student strongly comments on the lawyers’ treatment of a court case as ‘bleeding it dry, prolonging it and soaking up all the funds for themselves’.<sup>132</sup>

## VI DISCOURSE OF THINKING LIKE A LAWYER: 2011

The discourse of thinking like a lawyer involves problem solving. For the 2011 cohort problem-solving instruction is described as a ‘unique lecturing approach’,<sup>133</sup> which allows students to ‘take an active role in thinking like a lawyer’.<sup>134</sup> In the discourse of thinking like a lawyer, many of the 2011 students understand and are captivated by the importance of thinking and acting in a professionally appropriate way.<sup>135</sup> It allows focus on ethics and professionalism.<sup>136</sup> Only a few students discuss problems with the idea of thinking like a lawyer.<sup>137</sup> It is ‘arrogant to consider that you think in a different way just because you are studying law’.<sup>138</sup> While thinking like a lawyer has been criticised for its narrow focus,<sup>139</sup> the approach allows students to develop oral and written problem solving skills for the legal profession, endorsed in the literature.<sup>140</sup> The 2011 cohort undertook oral presentations

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> See, eg, Journal 16; Journal 28.

<sup>129</sup> Journal 27.

<sup>130</sup> Journal 22.

<sup>131</sup> BBC (UK), *Bleak House*, 2005.

<sup>132</sup> Journal 16.

<sup>133</sup> Journal 45.

<sup>134</sup> Journal 14; Journal 45; See also Chapter 7 IV A.

<sup>135</sup> Journal 1; Journal 3; Journal 21; Journal 46; Journal 47; Journal 48; Journal 55; Journal 66.

<sup>136</sup> Chapter 2; Macken and Dupuche, above n 6, 97; Mushin and Smith, above n 6, 480; James and Field, above n 7, 456, 459-465.

<sup>137</sup> Journal 27; Journal 45; Journal 46.

<sup>138</sup> Journal 27.

<sup>139</sup> See, eg, Kate Galloway, ‘Thinking Like a Lawyer: The Good the Bad and the Ugly’

< [http://researchonline.jcu.edu.au/23211/3/23211\\_Galloway\\_2012.pdf](http://researchonline.jcu.edu.au/23211/3/23211_Galloway_2012.pdf) >.

<sup>140</sup> James and Field, above n 7; Michelle Harner, ‘The Value of Thinking Like a Lawyer’ (2011) 70 *Maryland Law Review* <<http://papers.ssm.com>>; Paula Baron and Lillian Corbin, ‘Thinking Like a Lawyer/Acting like a

requiring them to think spontaneously as lawyers.<sup>141</sup> The language reveals enjoyment of debate, interaction and participation in the classroom in preparation for oral presentation tasks.<sup>142</sup> By contrast, some students use language, which reveal anxiety about oral presentations.<sup>143</sup> Presentation can be like a rite of passage to ‘think in a way ... never done before ... I behaved, acted and thought I was a lawyer’.<sup>144</sup> Some students acknowledge that problem solving assists them to develop relevant professional skills.<sup>145</sup> There is also satisfaction shown in the comment, ‘getting down to the problem solving and research, I found myself fascinated and comfortable. Upon reflection ... I was definitely in my element’.<sup>146</sup>

## VII DISCOURSE OF IMPROVEMENT: 2009

The discourse of improvement shows the language that students use to demonstrate their desire to improve on skills for learning and future practice. This discourse is linked to the use of reflective journaling to improve learning. While this discourse emerges most strongly from the 2009 cohort, it is also evident in the comments of the 2011 cohort. It demonstrates that students place importance on feedback for learning, self-development and improving grades. Legal education literature confirms feedback is considered to be ‘one of the most powerful influences on student learning and achievement’.<sup>147</sup> It has also been linked with positive student self-management skills.<sup>148</sup> The 2009 students value feedback from educators in different ways. ‘Armed with two returned papers with comprehensive feedback from the tutor I felt I was now well aware of the standard of expectations’<sup>149</sup> and ‘I found the remarks and comments very helpful for my next assignment’.<sup>150</sup>

Some students realise that the more effort and time they devote to the task, the greater are the benefits in terms of their learning. One student writes ‘I was rewarded with the extra effort I put into planning and construction of the second essay which showed in the results when I got the assignment back’.<sup>151</sup> She uses language to praise the lecturer who ‘instilled in us that whilst a law degree would involve a lot of hard work, discipline and sacrifice, he was at all

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Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education’ (2012) 46 *The Law Teacher* 100.

<sup>141</sup> Journal 61.

<sup>142</sup> Journal 57; Journal 65.

<sup>143</sup> See, eg, Journal 39; Journal 72.

<sup>144</sup> Journal 39.

<sup>145</sup> Journal 3; Journal 21; Journal 61; See also Chapter 7 IV C.

<sup>146</sup> Journal 72.

<sup>147</sup> James and Field, above n 7, 359.

<sup>148</sup> Ibid 358-361.

<sup>149</sup> Journal 4.

<sup>150</sup> Journal 6; Journal 25; See also Chapter 7 III E.

<sup>151</sup> Journal 4.

times encouraging growth and learning'.<sup>152</sup> The benefits of spending time on task is also recommended in first year legal education literature for law students.<sup>153</sup>

A number of undergraduate university students have mixed perceptions of reflective journaling; some students like it, other students remaining neutral, some students dislike the activity and some find it challenging.<sup>154</sup> The challenges of reflective journaling are perceived as integral to improving learning and reflection.<sup>155</sup> Reflective practice and journaling has been recommended in law schools as successful pedagogical techniques.<sup>156</sup> A number of the studies show that student's ideas about journaling change with experience of the journaling itself.<sup>157</sup> Many of the negative perceptions relate to uncertainty over aspects of journaling including instruction on purpose, evaluation criteria, and structure.<sup>158</sup> Students tend to value learning with more explicit instructions, guidance and formative feedback about journaling and favour the techniques that support it.<sup>159</sup>

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<sup>152</sup> Ibid.

<sup>153</sup> James and Field, above n 7, 31.

<sup>154</sup> William Baker, 'The Use of Journaling in the Development of Student Engagement and Confidence with the Teaching of Music in an Australian Early Childhood and Primary Teacher Education Degree: A New Perspective of an Old Problem' (2007) 1 *Australian Journal of Music Education* 40; Ian Beveridge, above n 16; Jane Bisman, 'Engaged Pedagogy: A Study of the Use of Reflective Journals in Accounting Education' (2010) *Assessment and Evaluation in Higher Education* 1; Haigh, above n 12; Robert Loo and Karran Thorpe, 'Using Reflective Learning Journals to Improve Individual and Team Performance' (2002) 8 *Team Performance Management: An International Journal* 134; Ombonya Otienoh, 'Reflective Practice: The Challenge of Journal Writing' (2009) 10 *Reflective Practice* 477; Swindell and Watson, above n 12; Stuart Palmer, Dale Holt and Sharyn Bray, 'The Learning Outcomes of an On-line Reflective Journal in Engineering' (Paper presented at Ascilite, Deakin University, Melbourne, 2 December 2008) <[www.ascilite.org.au/conferences/melbourne08/procs/palmer.pdf](http://www.ascilite.org.au/conferences/melbourne08/procs/palmer.pdf)>; Snadden et al, above n 10.

<sup>155</sup> Above n 154.

<sup>156</sup> Steven Goldberg, 'Bringing the Practice to the Classroom: An Approach to the Professional Problem' (2000) 50 *Journal of Legal Education* 414; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2007). See also Chapter 5.

<sup>157</sup> Bisman, above n 154; Anne Hume, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 *Higher Education Research & Development* 247; Frederick King and Diana LaRocco, 'E-journaling: A Strategy to Support Student Reflection and Understanding' (2006) 9 *Current Issues in Education* <<http://cle.asu.edu/volume9/number4/>>; Karran Thorpe, 'Reflective Learning Journals: From Concept to Practice' (2004) 5 *Reflective Practice* 327; Jeannie Wright, 'A Discussion with Myself on Paper: Counselling and Psychotherapy Masters Students' Perceptions of Keeping a Learning Log' (2005) 6 *Reflective Practice* 507; Frances Wong et al, 'An Action Research Study Into the Development of Nurses as Reflective Practitioners' (1997) 36 *Journal of Nursing Education* 476. See also Chapter 5.

<sup>158</sup> Beveridge, above n 17; King and La Rocco, above n; Haigh, above n 12; Swindell and Watson, above n 12; Liz Sutton, Michael Townend and Jeannie Wright, 'The Experiences of Reflective Learning Journals by Cognitive Behavioural Psychotherapy Student' (2007) 8 *Reflective Practice* 387.

<sup>159</sup> Beveridge, above n 17; Janet Dymont and Timothy O'Connell, 'Effects of a Workshop on Perceptions of Journaling in Outdoor Education Field Courses: An Exploratory Study' (2003) 26 *The Journal of Experiential Education* 75; Hume, above n 157; King and LaRocco, above n 157; Sharon Jenson and Christina Joy, 'Exploring a Model to Evaluate Levels of Reflection in Baccalaureate Nursing Students' Journals' (2005) 44 *Journal of Nursing Education* 139; Thorpe, above n 157; Sutton, Townsend and Wright, above n; Wong et al, above n 157; Anne Zahra, 'Empirical Evidence of Learning Journals as a Form of Assessment' (Paper presented at the Council for Australian University Tourism and Hospitality Education (CAUTHE) Conference 2008, Gold Coast International Hotel, Surfers Paradise, Queensland, Australia, 11-14 February 2008) <<http://www.griffith.edu.au/conference/cauthe2008/>>. See also Chapter 5.

Some 2011 students, like 2009 students, write positively about reflective journaling.<sup>160</sup> A small number dislike the challenge of the process,<sup>161</sup> particularly when they have not used this form of writing before.<sup>162</sup> A number of students transform their views about reflection and journaling from negative to more positive ones.<sup>163</sup> The 2011 cohort tend to do this more than the 2009 cohort. This could be explained by fact the 2011 cohort are given more instruction about journaling than the 2009 cohort. The more frequently they write reflectively, the more they are engaged by it and find it beneficial to their learning.<sup>164</sup> Transformation frequently occurs at the end of semester when the reflective journal is due and the course is nearing completion.<sup>165</sup> The following extract of text shows evidence of a transformed perspective:

How can they assess something as personal as a journal? After reading limited literature and research, I understand the phenomenon that is reflective writing and do not disagree with what it aims to achieve ... to limit one's descriptions, question underlying beliefs ... critically reflect on reflect one's own thoughts. It is challenging!<sup>166</sup>

These findings are also supported in the literature of reflective journaling, which shows that perceptions of journaling tend to improve over time and with practice.<sup>167</sup> The 2009 cohort journals support the view in the literature that reactions to journaling are varied and can change with more experience of journaling.<sup>168</sup> This is evident with the transformative view a number of students make in their comments on journaling below.<sup>169</sup> The more competently a student undertakes a task, the greater the likelihood of connection and engagement with the subject matter.

There is the contentious issue of the writer writing for the assessor,<sup>170</sup> if the task is to be taken seriously by students. Students have different levels of engagement with reflective journal writing, which may be associated with assessment.<sup>171</sup> In this research some students like journal writing whereas other students do not. Contrasting views are apparent in the two

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<sup>160</sup> Journal 9; Journal 13; Journal 21; Journal 33; Journal 36; See also Chapter 7 III D; Chapter 7 IV H.

<sup>161</sup> Journal 3; Journal 52; Journal 53.

<sup>162</sup> Journal 2, Journal 36.

<sup>163</sup> Journal 5; Journal 7; Journal 9; Journal 13; Journal 21; Journal 26; Journal 40; Journal 50.

<sup>164</sup> Journal 2; Journal 33.

<sup>165</sup> See, eg, Journal 5; Journal 7; Journal 9; Journal 13; Journal 21; Journal 26; Journal 40; Journal 50; Journal 74.

<sup>166</sup> Journal 74.

<sup>167</sup> See, eg, Jenson and Joy, above n 159; Minott, above n 10, Renee Williams et al, 'Journal Writing To Promote Reflection By Physical Therapy Students During Clinical Placements' (2002) 18 *Physiotherapy Theory and Practice* 5; Susan Murray, 'The Benefits of Journaling: "Stories are Medicine" "Art is Medicine"' (1997) 32 *Parks and Recreation* 68; Terry King, 'Development of Student Skills in Reflective Writing' Improving the Quality of Reflective Writing' <[http://www.osds.uwa.edu.au/data/page/37666/Terry King doc](http://www.osds.uwa.edu.au/data/page/37666/Terry%20King%20doc)>; Swindell and Watson, above n 12.

<sup>168</sup> Hume, above n 157; Wright, above n 157; Wong et al, above n 157; Bisman, above n 154; Thorpe, above n 157; King and LaRocco, above n 139.

<sup>169</sup> Journal 9; Journal 25.

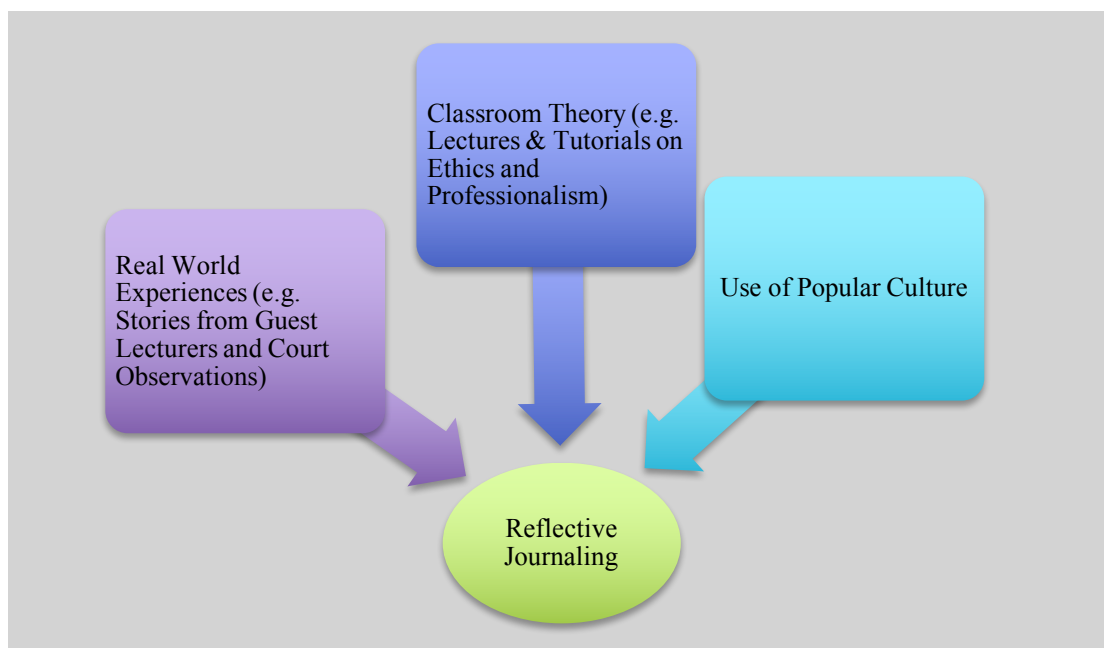
<sup>170</sup> Janet Dymont and Timothy O'Connell, 'The Case of Reflective Journals-Is the Jury Still Out?' (2011) 12 *Reflective Practice: International and Multidisciplinary Perspectives* 47; Snadden et al, above n 10.

<sup>171</sup> Dymont and O'Connell, above n.

student responses, ‘I have enjoyed writing it’<sup>172</sup> and ‘It is not like writing an essay that [is] off putting’.<sup>173</sup> Despite the different perceptions of the form of assessment, the benefits of reflective practice improving over time are confirmed and endorsed in the academic literature review on journaling.<sup>174</sup> In this research some students transform their views. An example of this view follows, ‘At first I was quite doubtful with the aim of a reflective journal ... only some time later I realised this reflective journal helps me shape an abstract structure of the things I have learned and want to know more about’.<sup>175</sup> The benefits of reflective practice are recognised in recent legal education literature<sup>176</sup> and are recognised in the research:

I found the process of writing a reflective journal, challenging but also good ... I recognised the importance of journal writing - while it is important to know where you are and where you are going it is just as important to realise how you got there.<sup>177</sup>

A variety of real world experiences including the guest lecturers, court experiences, classroom theory, popular culture are arguably suitable for foundation students to use for reflective journaling either separately or in combination, as demonstrated in Figure 1.



**Figure 1: Effective Experiences for Reflective Journaling for Foundation Law Students**

Students in the two cohorts have mixed perceptions of journaling, which can be transformed with some students using more positive language about journaling over time.<sup>178</sup> If this

<sup>172</sup> Journal 19.

<sup>173</sup> Journal 24.

<sup>174</sup> Bisman, above n 154; Hume, above n 157; Wright, above n 157; Wong et al, above n 157; Thorpe, above 157; King and LaRocco, above n 157.

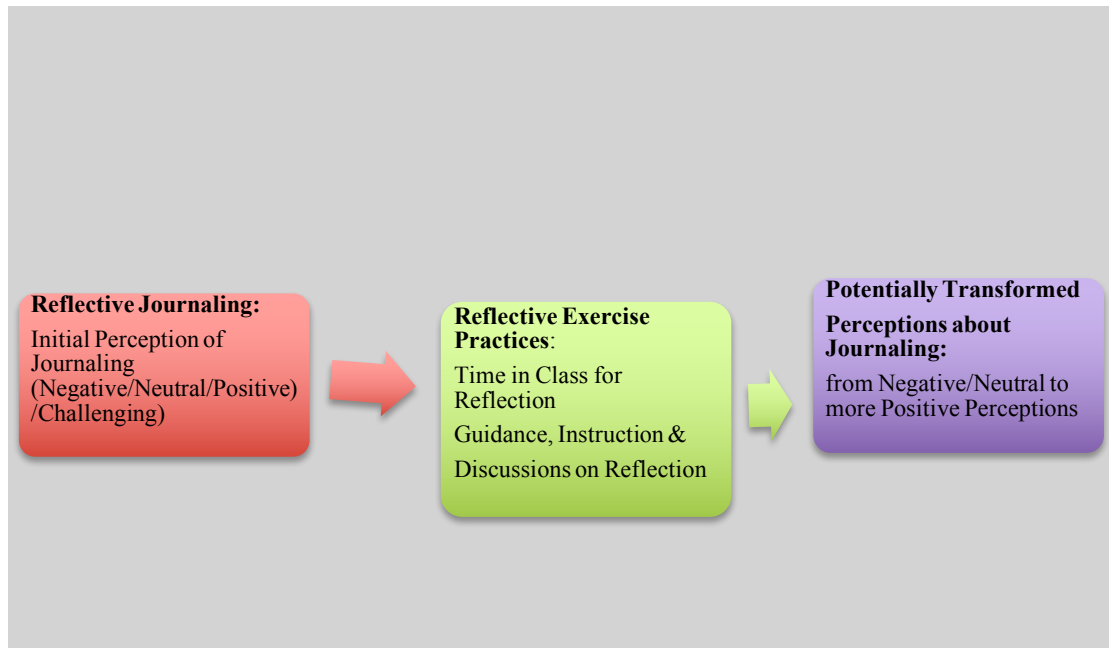
<sup>175</sup> Journal 25.

<sup>176</sup> James and Field, above n 7, 354-358.

<sup>177</sup> Journal 9.

<sup>178</sup> See Chapter 7 III D.

research is compared with other studies outlined in Chapter 5, the results are similar.<sup>179</sup> Students also show a transformative view in relation to journaling with a number realising the potential for journaling to assist with learning.<sup>180</sup> This is particularly evident with the 2011 cohort.<sup>181</sup> Reasons for this transformation are likely to be associated with the interventionist strategies, derived from the academic literature. This is demonstrated diagrammatically, in Figure 2, which shows three progressive steps that may enhance student engagement with reflective journaling, namely time in class for reflection, guidance, instruction and discussions on reflection.



**Figure 2: Perceptions of Reflective Journaling with Practice and Intervention**

## VIII DISCOURSE OF ETHICS: 2011

The discourse of ethics emerges strongly from the journaling texts of the students. The 2011 cohort examine ethics with more diverse and multiple perspectives than the 2009 students, who do not show as much evidence of ethical understandings. Ethics in the course are described as a ‘good insight’,<sup>182</sup> ‘very interesting’<sup>183</sup> and ‘really captivating’.<sup>184</sup> The 2011 data provides a deeper level of analysis of ethics at multiple levels than the 2009 data. Students reflect about ethics from cultural, institutional, societal and individual levels.<sup>185</sup> They

<sup>179</sup> Beveridge above n 17; Bisman, above 154; Wright, above 157; Thorpe, above n 17; King and LaRocco, above n 157; James and Field, above 7, 353-358; Penelope Watson and Rachael Field, ‘Promoting Student Well-being and Resilience at Law School’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 390, 411, 419.

<sup>180</sup> Chapter 7 III D.

<sup>181</sup> Chapter 7 IV F.

<sup>182</sup> Journal 27.

<sup>183</sup> Journal 14; Journal 24.

<sup>184</sup> Ibid.

<sup>185</sup> See, eg, Journal 7; Journal 27; Journal 33; Journal 34; Journal 39; Journal 64.



comment on the ethical roles of practitioners in court, with more detailed explanation and less surface description than the 2009 cohort.

Both the 2009 and 2011 cohorts make a link between ethical professionalism towards the client and the pressure to make money. A number of students value the honesty shown by the lecturers in relation to this topic.<sup>186</sup> For example a student writes, 'The lectures did not sugar coat the profession, and I am grateful for that',<sup>187</sup> but 'there are lawyers and jurists out there who do what they do for ethically sound reasons'.<sup>188</sup> The 2011 students also link access to justice with affordable representation. 'Ridiculously excessive',<sup>189</sup> fees limit access to legal services and justice.<sup>190</sup> A win at all cost mentality has also been identified amongst lawyers, as impacting negatively on ethics and good values.<sup>191</sup> Similarly, a concern for upholding social justice is revealed in the written language of the data.<sup>192</sup> One student notes the 'importance of fairness and equity, allowing everyone equal access to justice'<sup>193</sup> and identifies her goal to 'uphold these values in the future as a lawyer'.<sup>194</sup> Values such as equality and justice need to be preserved for the legal profession to maintain integrity and the respect.<sup>195</sup> Other students predict they will act ethically or at least hope to act in faultless ethical ways; 'Professional ethics, to me, includes honesty, efficiency, fairness, justice, social responsibility and a moral conscience. This is the legal identity I want to create'.<sup>196</sup>

It is important that students reflect on ethics and professionalism in order to explore and understand that these issues are integral to legal practice.<sup>197</sup> Such a position is supported in the legal ethics literature as part of a pervasive approach to ethics.<sup>198</sup> Legal ethics is seen not only important at an individual level but more for the legal profession and society as a whole.<sup>199</sup> In this research a 2011 student persuasively argues that ethics should take a leading role in legal education from an early stage.<sup>200</sup>

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<sup>186</sup> Journal number 3; Journal 63; Journal 64.

<sup>187</sup> Journal 33.

<sup>188</sup> Journal 65.

<sup>189</sup> Journal 1; Journal 2; Journal 33.

<sup>190</sup> Journal 33.

<sup>191</sup> Journal 7.

<sup>192</sup> Journal 33.

<sup>193</sup> Journal 75.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Journal 64; Journal 31.

<sup>197</sup> Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35 *Sydney Law Review* 27; Iain Campbell and Sara Charlesworth, 'Salaried Lawyers and Billable Hours: A New Perspective from the Sociology of Work' (2012) 19 *International Journal of the Legal Profession* 89.

<sup>198</sup> See, eg, Nick Tarr, 'Teaching the Reflective Practitioner in the United States' (1999) 33 *Law Teacher* 310; Peter Yeoh, 'Teaching ethics in financial services law' (March 2010) 44 *The Law Teacher* 74; Robertson, above n 5; Frank Armer 'The Teaching Of Ethics in Law Schools: Some Academic Perspectives' (1998) 16 *Journal of Professional Legal Education* 247. See Chapter 3.

<sup>199</sup> Above n 198.

<sup>200</sup> Above n 198.

Legal education is the best platform to inculcate and foster ethical obligations and legal professionalism. ... Ethics should be taught at the beginning of the students' law degree till their practical legal training ...the sooner ethics are instilled in budding practitioners, the sooner they will be more mindful that professional obligations are more critical than any business imperative.<sup>201</sup>

A 2011 student recognises enhanced learning about professionalism and dislikes negativity about the 'money-hungry profession'<sup>202</sup> as tantamount to 'becoming part of the dark side.'<sup>203</sup> Another 2011 student acknowledges potential dilemmas between 'the ideal of professionalism or the client who needs legal help and the lawyer who wants his pay cheque'.<sup>204</sup> Similarly, after undertaking the course a 2009 student notes that her knowledge of the meaning of professionalism is enhanced.<sup>205</sup> Another student in this cohort questions the proposition that you cannot be an ethical businessperson where your focus is profit, suggesting that you can be 'both a businessperson and still have good ethics'.<sup>206</sup> Students' perspectives will vary depending on the meaning they attribute to the words ethics and professionalism

Some students in both cohorts grapple with whether they will be able to resolve ethical dilemmas as future legal practitioners, whereas other students are more confident in their potential abilities.<sup>207</sup> They understand the correct theoretical position but that achievement of such a position may be difficult.<sup>208</sup> Excellent examples in the 2011 cohort include representing someone who is guilty and how it is essential that lawyers have this responsibility.<sup>209</sup> The 2011 cohort demonstrates that the students use more confident language about entry into and survival in legal practice than the 2009 cohort.<sup>210</sup> Some of the 2009 cohort reveal evidence about not coping or surviving legal practice.<sup>211</sup> A student from the 2011 cohort, for example, argues he has 'a driving passion to work in international law for the United Nations'.<sup>212</sup>

The quality of evaluation of ethical perspectives in the 2011 journals is higher than in the 2009 journals. For example, one 2011 student discusses a path of transparent self-evaluation, noting a transformation in her views, recognising that profit over professionalism is a

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<sup>201</sup> Ibid.

<sup>202</sup> Journal 5.

<sup>203</sup> Ibid.

<sup>204</sup> Journal 7.

<sup>205</sup> Journal 15.

<sup>206</sup> Journal 26.

<sup>207</sup> Journal 27.

<sup>208</sup> Journal 27; Journal 7.

<sup>209</sup> Ibid.

<sup>210</sup> Journal 66.

<sup>211</sup> Journal 9; Journal 12.

<sup>212</sup> Journal 66.

perspective she no longer wants to hold.<sup>213</sup> She emphasises that it is more important for her to ‘help those who cannot afford to help themselves’,<sup>214</sup> valuing the importance of acting in the best interests of the client. She strongly argues that access to justice can be influenced by the way in which she chooses to practice law. Her comments reveal previously held prejudicial view of defendants as ‘bogans that breed’.<sup>215</sup> A 2009 journal describes a lecture on ethical professionalism as informative, transforming naivety about the profession:

I felt that before this lecture I was naïve as to the challenges in the legal profession. I often forget that honesty, integrity and trust are not qualities evident in all people. The profession is competitive, strenuous, time consuming and marriage destroying. Not everyone survives.<sup>216</sup>

Some students from the 2011 cohort show evidence of an attitude consistent with representing the best interests of a client, through empathy and positioning themselves with an ethics of care mentality.<sup>217</sup> Such students acknowledge ‘helping people in their darkest hour’,<sup>218</sup> thus linking professionalism with compassion and warming to the idea of entering the profession by promotion of social justice.<sup>219</sup> Such depth of ethical analysis is not as apparent in the 2009 journals.<sup>220</sup> For example, one 2009 journal outlines the importance of the lawyer’s duties to the court but does not elaborate on this<sup>221</sup> and another comment describes how a lawyer’s personal life interrelates with his professional life<sup>222</sup> but fails to explain the reasons. Similarly, academic literature recognises that the duty of care to clients and ethics of care approach<sup>223</sup> should be outlined to students in their foundation years.<sup>224</sup>

## IX DISCOURSES OF JUDGEMENT AND ANALYSIS: 2011 AND 2009

Judgement is seen as both a key skill for legal practice in advocacy<sup>225</sup> and a TLO in relation to ethics and professional responsibility for law graduates.<sup>226</sup> Law students need to develop judgement about ‘claims, argument, rules, doctrines and decisions’<sup>227</sup> and their own ‘actions’,<sup>228</sup> including their oral and written communications. Critical analysis is also viewed

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<sup>213</sup> Journal 1.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Journal 12.

<sup>217</sup> Journal 33; Journal 34; Journal 39; Journal 64.

<sup>218</sup> Journal 34.

<sup>219</sup> Journal 33; Journal 64.

<sup>220</sup> See, eg, Journals 7; Journal 23.

<sup>221</sup> Journal 7.

<sup>222</sup> Journal 23.

<sup>223</sup> Chapter 2; Suzette Barnaby, ‘Legal Ethics for the Real World: A Model for Engaging First Year Law Students’ (2004) 4 *Queensland University of Technology Law and Justice Journal* 219.

<sup>224</sup> James and Field, above n 7, 456, 459-465.

<sup>225</sup> Bobette Wolski, *Skills, Ethics and Values for Legal Practice* (LawBook Co, 2<sup>nd</sup> Edition, 2009) 683, 10.70.

<sup>226</sup> Sally Kift, Mark Israel and Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Report, Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>TLO2(c).

<sup>227</sup> James and Field, above n 7, 288.

<sup>228</sup> Ibid.

as key legal thinking skill.<sup>229</sup> In legal education TLOs include the thinking skills of critical analysis.<sup>230</sup> Questioning also forms part of many prompt-based taxonomies of critical reflection, indicating its importance for learning.<sup>231</sup> Questioning is moreover an integral part of problem solving, both as a student and as a lawyer, particularly when interviewing clients.<sup>232</sup>

The discourse of judgement is evident in the language used by both the 2009 and 2011 cohorts. The discourse of analysis is most evident in comments of the 2009 cohort. Like the 2009 students, most 2011 students revel in making judgements about the judiciary, sentencing practices, legal educators, peers, defendants, legal practitioners, their legal education and the legal profession.<sup>233</sup> Judgments made over sentencing can be critical of the judicial decision maker and the first person text allows the students to write in a judgmental voice. ‘The truth is that the reason given for the lesser sentence was the Magistrate did not want him to lose his job. I keep thinking that he may have needed this loss of employment in order for the lesson to be learned. He could have killed someone, period’.<sup>234</sup>

The 2011 cohort received instruction to avoid labelling defendants too harshly, without adequate reasons. Some students are empathetic about defendants while others students are not.<sup>235</sup> ‘When a student is sitting in a court room, witnessing accounts of a heinous crime they should not pity the accused because this shows the criminal that as long as people pity them because of their bad upbringing they can re-offend and manipulate the law’.<sup>236</sup> Reasons for the judgments are sometimes omitted from the student comments, in turn showing the need for increased guidance with legal writing.

Some students label defendants as ‘bogans’<sup>237</sup> or from ‘low socio-economic backgrounds by the way they speak and dress’.<sup>238</sup> Defendants’ appearances are judged,<sup>239</sup> including comments such as ‘generally dirty’<sup>240</sup> and ‘not showered in days’.<sup>241</sup> ‘A large portion of those attending court were not dressed up in a manner that I would have thought appropriate prior to visiting

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<sup>229</sup> Ibid 291-292.

<sup>230</sup> Kift, Israel and Field, above n 226, TLO3.

<sup>231</sup> See, eg, Anne Brockbank and Ian McGill, *Facilitating Reflective Learning Through Mentoring & Coaching* (Kogan Page, 2006) 34.

<sup>232</sup> Wolski, above n 225, 172; See also James and Field, above n 7, 295 on critical disposition.

<sup>233</sup> See, eg, Journal 1; Journal 21; Journal 51; Journal 61; Journal 60; Journal 64; Journal 71.

<sup>234</sup> Journal 73.

<sup>235</sup> Journal 29; Journal 33.

<sup>236</sup> Journal 29.

<sup>237</sup> Journal 1.

<sup>238</sup> Journal 57.

<sup>239</sup> See, eg, Journal 1; Journal 21; Journal 51; Journal 61; Journal 60; Journal 64; Journal 71.

<sup>240</sup> Journal 71.

<sup>241</sup> Ibid.

the court'.<sup>242</sup> 'Other students and myself were dressed much more appropriately and we were there only to take notes!'.<sup>243</sup>

The language of some 2011 students also shows that they do not wish to be associated with defendants<sup>244</sup> or mistaken for defendants.<sup>245</sup> Comments indicative of this disassociation include derogatory judgments on the attire and demeanour of defendant:

Needless to say I hated him, if previously I had any idea what a criminal looked like it was him- battle scars all over him face like he had been in a thousand fights, missing a tooth, wearing a t-shirt and track pants, and to be completely politically incorrect, the scariest type of bogan.<sup>246</sup>

Students indicate some disrespect for defendants: 'It disappointed me to think that I may be spending six years of my life getting a degree only to end up working somewhere that people don't really care about, or I may be representing someone who really couldn't care less'.<sup>247</sup> 'Not only did the defendants have a disregard for the law by showing no respect for the judge but they did nothing to help themselves, they dressed poorly and spoke to the judge in an informal manner'.<sup>248</sup> 'All of these people were obviously from a low socio-economic background by the way they talked and dressed'.<sup>249</sup> Some students are 'particularly appalled by the unprofessional language used by some of the defendants'<sup>250</sup> and label them as 'hostile and dislikeable'.<sup>251</sup> Similarly, the 2009 cohort judge the defendants' behaviours and demeanours. Assumptions are made about social class based on dress and language of the defendant. Examples include depiction of a defendant as 'a bogan in a flanny'<sup>252</sup> and naming a defendant as 'a rough bikie type'<sup>253</sup> based on his appearance. Students' language can reveal a concern about being viewed as a defendant. 'The security was quite intimidating and I forgot about being a Uni student and felt as though I was about to appear in court for committing a crime'.<sup>254</sup> Language of other students shows fear of 'being treated like a criminal by security'<sup>255</sup> or wishing for a sign 'saying university student'<sup>256</sup> for fear of being

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<sup>242</sup> Journal 61.

<sup>243</sup> Journal 64.

<sup>244</sup> See, eg, Journal 59.

<sup>245</sup> See, eg, Journal 1; Journal 26; Journal 37.

<sup>246</sup> Journal 1.

<sup>247</sup> Journal 21.

<sup>248</sup> Ibid.

<sup>249</sup> Journal 28.

<sup>250</sup> Journal 22.

<sup>251</sup> Journal 60.

<sup>252</sup> Journal 18.

<sup>253</sup> Ibid.

<sup>254</sup> Journal 59.

<sup>255</sup> Journal 26.

<sup>256</sup> Journal 37.

mistaken as a defendant. By contrast a 2011 student comments, 'I was exploiting these people's misfortune, and witnessing something that was private and shameful'.<sup>257</sup>

The discourse of analysis includes evaluation and questioning by the students.<sup>258</sup> Some of the 2011 student analysis is more detailed than the 2009 cohort, with fuller and more detailed evaluations reported in relation to the court system and ethical professionalism in particular.<sup>259</sup> For example, a 2009 student describes lawyers' skills in the following way: 'they all had poor presentation skills and were unorganised' but fails to explain why he took this view.<sup>260</sup> Many 2009 students undertake critical analysis and evaluation of the court system, including the role of the judiciary, practitioners and defendants. Commonly the 2011 students effectively analyse the differences between the Tasmanian Supreme Court and the Magistrates' Court. For example, one student compares the role of the Supreme Court as differing greatly with a Magistrate's from 'the type of cases they handle'.<sup>261</sup> Students evaluate the efficiency of the systems when comparing courts. Whilst both courts have strict proceedings, the main difference is 'cases in the Magistrate's Court were dealt with very quickly'.<sup>262</sup>

Some of the 2009 cohort of students reflect about and evaluate issues associated with ethical professionalism with limited instruction but with interest. 'These lectures cemented my decision to continue on with my law degree ... because they show some of the issues we will face when we enter the profession'.<sup>263</sup> Students tend to be open and transparent about the court, using honest critical comments, such as the court clerk was so disinterested that he 'slouched in his chair as though he was watching the replay of an ultra slow test cricket match for the umpteenth time that day'.<sup>264</sup>

Evaluation of ethical dilemmas is discussed with some concern by the 2009 cohort but also with a willingness to embrace the challenge of entering the profession. This is evident in the language used when students comment on the lectures relating to expert professionalism. 'Whilst these lectures have made me consider my decision to continue with a law degree, the examples of successful lawyers inspire me'.<sup>265</sup> 'Ethical challenges in this profession have the

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<sup>257</sup> Journal 33.

<sup>258</sup> See, eg, Stella Cottrell, *Critical Thinking Skills—Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011) 2.

<sup>259</sup> Journal 1.

<sup>260</sup> Journal 22.

<sup>261</sup> Journal 18.

<sup>262</sup> Journal 22.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

ability to break you. Yet I still can't help feeling my yearning to help people can only be satisfied by entering this profession'.<sup>266</sup>

Both cohorts question the course workload, the assessment, the legal system, the role of legal practitioners, the judiciary, the defendants, themselves as learners and importantly as future legal practitioners, dealing with difficult ethical issues. 'Do those in the legal profession have an obligation to behave ethically (and legally) all the time? Can there ever truly be a line drawn between public and personal life, and is that line further blurred for those in the legal profession?'<sup>267</sup> They also question representing someone who is guilty: 'I would be unable to forgive myself if I played a part in letting a guilty man walk free'.<sup>268</sup> Students question themselves and their ability to cope in the university law environment. This view is supported by the literature, which indicates that law students are stressed or anxious over performance and potential performance.<sup>269</sup> 'What was I thinking?'<sup>270</sup> 'Why did I want to do law?'<sup>271</sup> 'Will I be able to cope in this new environment?'<sup>272</sup> 'Will I be strong enough to be an ethical lawyer?'<sup>273</sup> This is not surprising as they are first year law students transitioning into a new legal world.

Some 2009 students question the assessment when they do not like it, indicating that assessment processes could be modified<sup>274</sup> or that the assessment load is too heavy.<sup>275</sup> An example of a student criticising tutorial assessment is, 'I find it pointless that one must complete set work in order to receive ... weekly 1%. What is pointless about it is that it is not marked so that there is no incentive to do a good job'.<sup>276</sup> This comment also reinforces the fact that students are competitive and strategic when it comes to grades.

## X CONCLUSION

The discourse of engagement shows 2011 students are engaged by variety in relation to course delivery, generally like entertainment and excitement and tend to value and learn from supportive connectedness with others. Such experiences include different types of lectures, guest lecturers, the smaller, supportive, more interactive setting in tutorials and the experiential learning environment of the courtroom. Guest lecturers are valued more so for

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<sup>266</sup> Journal 12.

<sup>267</sup> Journal 14.

<sup>268</sup> Journal 12.

<sup>269</sup> James and Field, above n 7, 346; Kift et al, above n 4.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

<sup>272</sup> Journal 31.

<sup>273</sup> Journal 15.

<sup>274</sup> Journals 17; Journal 26.

<sup>275</sup> Journal 2.

<sup>276</sup> Ibid.

learning about the profession and the skills needed for it by the 2011 cohort than the 2009 cohort. This position is also endorsed by reference to the 2009 data, albeit not to the same extent. The influence of popular culture for both the 2011 and 2009 student cohorts is evident but more so for the 2009 cohort than the 2011 cohort. This is likely to be because 2011 cohort were not specifically directed to discuss popular culture in the criteria rubric.

In both cohorts an appreciation of feedback, direction, instruction and guidance for learning is recognised in the discourses, constructed from the constructivist grounded theory processes. This is also supported in the academic literature.<sup>277</sup> Legal educators can use these techniques within group work, which also assists students with developing a sense of belonging. Such a sense of belonging is important for students to develop social connectedness in a new environment, which can be perceived as daunting. It is therefore not surprising that this discourse also reveals engagement with positive and enthusiastic teaching teams to encourage student learning. Both cohorts appreciate supportive settings, but again in terms of learning they are generally commented on in more depth from the 2011 cohort than the 2009 cohort. Learning from court experiences is discourse in both cohorts. Some 2009 students make inappropriate judgments perhaps because they lack awareness of ethical and professional behaviour.

Students in both cohorts have mixed reactions to reflective journaling, with a number transforming their views from negative to positive.<sup>278</sup> They are engaged by, learn from and sometimes transformed by, court experiences.<sup>279</sup> Students compare and contrast court experiences with popular culture and use it to help understand key components of the course.<sup>280</sup> They also compare and contrast lower and higher courts, valuing formality over informality with their language identifying formality with respect and informality with disrespect.<sup>281</sup> Such reflective experiences allow students to connect ideas about course materials, popular culture and the courtroom in order to advance their perspectives. The validity of using reflective journaling is revealed as an appropriate pedagogical tool given it allows students to analyse many aspects of law including evaluation of courtroom experiences, to question the law, particularly in relation to ethics and professionalism and to make judgments. It can therefore help facilitate deep learning and active learning through analysis, evaluation and questioning.<sup>282</sup>

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<sup>277</sup> See, eg, Hume, above n 157; Dymont and O'Connell, above n 170; Minott, above n 10.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid.

<sup>282</sup> James and Field, above n 7, 288-292.



The discourse of thinking like a lawyer shows students are stimulated and challenged by the idea of thinking like a lawyer through problem solving. Oral presentations, which involve problem solving, although confronting, usually result in a high sense of achievement.<sup>283</sup> Both cohorts show a willingness to improve their problem solving and communication skills both as students and as future practitioners. In relation to the discourse of ethics, students reveal attitudes towards ethics through their examination of the course, court observations and popular culture.<sup>284</sup> The level of analysis of ethics varies with some 2011 students able to examine ethical issues at individual, institutional, cultural and societal levels.<sup>285</sup> Students' evaluation of making profit at the possible cost of professionalism reveal ethical stances in relation to future legal practice.<sup>286</sup> Students are interested in learning about real life practice stories and the ethical issues they may face.<sup>287</sup> Ethical perspectives of the participants in court are compared with pre-existing perceptions of legal identities, often derived from popular culture.

Both cohorts enjoy making judgments about many aspects of the law, the course, the court system and its participants. The discourses on judgment and analysis shows that the 2011 cohort give more detailed explanations for judgments and provide greater analysis of core components of the course. There is a tendency from both cohorts to judge defendants relatively harshly on the grounds of dress, demeanour, language and socio-economic class. Whilst some students reveal an attitude of an ethics of care towards clients, others do not. Some of these students dissociate themselves from defendants and use language that is not always respectful. This shows that students need to understand more about the ethical duties to clients.

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<sup>283</sup> Ibid.

<sup>284</sup> Ibid.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

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B *Television/ Movies*

ABC (USA), *Boston Legal*, 2004-2008

BBC (UK), *Rumpole of the Bailey*, 1975-1992

BBC (UK), *Bleak House*, 2005

NBC Television (USA), *Law and Order*, 1990-present

Nine Network (Aus), *Underbelly: A Tale of Two Cities*, 2009

*Legally Blonde* (Directed by Robert Luketic, MGM, 2001) 1:36.00

Syndicated (USA) *Judge Judy*, 1996-present

## CHAPTER 9: FINDINGS ABOUT LEGAL PEDAGOGY: PATHWAYS FOR TEACHING ETHICS, PROFESSIONALISM AND CRITICAL REFLECTION

### I INTRODUCTION

This chapter summarises the findings of the research and makes recommendations about teaching ethics, professionalism and critical reflection in the undergraduate legal curriculum. Firstly, it shows the importance of the inclusion of ethics and professionalism in the undergraduate legal curriculum.<sup>1</sup> Secondly, it argues for the inclusion of ethics and professionalism into the legal curriculum from the foundation year in a variety of pedagogical ways, pervasively, traditionally and less traditionally.<sup>2</sup> Thirdly, it recommends critical reflection should be taught from the foundation year and is improved when there is guidance, instruction and constructive alignment between learning outcomes and techniques.<sup>3</sup> The research, informed by the academic literature develops and provides a cyclical prompt-based model to assist students with critical reflection. Fourthly, it shows how reflective journals assist educators to scrutinise the discourses, which are constructed from the students' journal texts and provides insights towards a more engaging legal pedagogy. It reveals how reflective journaling can be a successful pedagogical technique as it allows educators to be critically reflective about their own practices through the students' eyes.<sup>4</sup>

The research, using constructivist grounded theory<sup>5</sup> and discourse analysis<sup>6</sup> examines the reflective journal writing of two cohorts of law students at UTAS in 2009 and 2011.<sup>7</sup> This concluding chapter highlights significant findings in relation to legal pedagogy through revisiting the research questions,<sup>8</sup> which inform the analysis<sup>9</sup> and makes valuable contributions to the development of the literature in these areas.<sup>10</sup>

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<sup>1</sup> See Chapter 2 I-III; Chapter 2 V; Chapter 3 I; Chapter 3 II; Chapter 3 III.

<sup>2</sup> Table 1 relates to the foundation year; Table 2 relates to the foundation year and beyond.

<sup>3</sup> Sally Kift, '21<sup>st</sup> Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1; Kelley Burton and Judith McNamara, 'Assessing Reflection Skills in Law using Criterion-referenced Assessment' (2009) 19 *Legal Education Review* 171, 178; John Biggs and Catherine Tang, *Teaching for Quality Learning at University—What the Student Does* (McGraw Hill, 4<sup>th</sup> ed, 2011) 28-29.

<sup>4</sup> Stephen Brookfield, *Becoming a Critically Reflective Teacher* (Wiley, 1995) Preface.

<sup>5</sup> Kathy Charmaz, *Constructing Grounded Theory* (Sage, 2006); Kathy Charmaz, 'A Constructivist Grounded Theory Analysis of Losing and Regaining a Valued Self' in Frederick Wertz et al (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (Guilford Press, 2011); Kathy Charmaz, 'Grounded Theory Methods in Social Justice Research' in Norman Denzin and Yvonna Lincoln (eds), *Handbook of Qualitative Research* (Sage, 4<sup>th</sup> ed, 2011).

<sup>6</sup> Martyn Descombe, *The Good Research Guide for Small-Scale Social Research Projects* (Open University Press, 3<sup>rd</sup> ed, 2007) 308; Gunther Kress, *Linguistic Processes in Sociocultural Practice* (Oxford University Press, 2<sup>nd</sup> ed, 1989); Gunther Kress, 'Discourse Analysis and Education: A Multimodal Social Semiotic Approach' in Rebecca Rogers (ed), *An Introduction to Critical Discourse Analysis in Education* (Routledge, 3<sup>rd</sup> ed, 2011).

<sup>7</sup> Chapter 7 I-V; Chapter 8 I-V.

<sup>8</sup> Chapter 1 VII.

<sup>9</sup> Chapter 7 I-VI; Chapter 8 I-V; Chapter 9 I-V.

<sup>10</sup> Chapter 10 II-V. This thesis in progress has been cited by Magdaline D'Silva, 'A New Legal Ethics Education Paradigm: Culture and Values in International Arbitration' (2013) 23 *Legal Education Review* 83, n 31.



The findings of this research support the view that ethics and professionalism should be taught from the foundation years onwards.<sup>11</sup> It argues that best practice in teaching these topics involves a number of varied, high quality pedagogical activities, including the use of reflective journaling, guest lecturers, small group work, role-play and the use of popular culture.<sup>12</sup> Reflective journaling, in particular, is an effective student-centred learning device, which can be used in conjunction with the other pedagogical activities to assist in informing and developing multi-skilled graduates with potential resilience to deal with professional practice issues in these areas.<sup>13</sup> Specific practical guidance is offered to legal educators, in light of curriculum developments in Australian legal education, to improve and assist in embedding and mapping of TLOs relating to ethics, professionalism and critical reflection within undergraduate legal curriculums.<sup>14</sup> Such practical guidance is informed by literature reviews<sup>15</sup> and uses constructivist grounded theory and a discourse analysis of the data.<sup>16</sup> These highly valuable research techniques for legal researchers are revisited. The chapter concludes by highlighting the scope for future research in all of these areas.

## II RESEARCH QUESTIONS AND FINDINGS

### *A Why, How and When should Ethics and Professionalism to be taught to Law Students?*

This thesis describes the consequences of failure to uphold ethical and professional standards in law.<sup>17</sup> Developing teaching and learning about ethics and professionalism within the legal curriculum is crucial to legal education in preparation for an environment prone to challenges, negativity and problems with ethical practice.<sup>18</sup> Foundation law students must learn the compliance standards required of them as students, for admission to practice and for legal practice, together with the consequences of failing to meet such standards. Legal education also needs focus on positive aspects of legal practice to assist law students develop resilience, reflective practice and appropriate skills.<sup>19</sup>

A traditional teaching of ethics, through lectures, particularly about case law is supported in

<sup>11</sup> Chapter 2 I-III; Chapter 2 V; Chapter 3 I; Chapter 3 II, Chapter 3, Table 1; Chapter 3 III.

<sup>12</sup> Peter Coe and Egle Dagilyte, 'Professionalism in Higher Education: Important not only for Lawyers' (2014) 48 *Law Teacher* 33, 45-46; Susan Daicoff, 'Lawyer Form Thyself: Professional Identity Strategies in Legal Education through Soft Skills Training, Ethics and Experiential Courses' (2014) 27 *Regent Law Review* 205.

<sup>13</sup> Chapter 5 I; Chapter 5 V.

<sup>14</sup> Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

<sup>15</sup> Chapter 2 I-V; Chapter 3 I-V; Chapter 4 I-IV; Chapter 5 I-VI.

<sup>16</sup> Chapter 6 III-VIII; Chapter 7 I-VI; Chapter 8 I-V.

<sup>17</sup> Chapter 2 III.

<sup>18</sup> Chapter 2 II-III; Chapter 3 I-V.

<sup>19</sup> Nickolas James and Rachael Field, *The New Lawyer* (Wiley, 2013) 343, 345-346, 354, 364; Penelope Watson and Rachael Field, 'Promoting Student Well-being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 389.

the academic literature.<sup>20</sup> The value of extending the teaching beyond traditional lectures, to include interactive, multi-faceted experiences is increasingly being promoted.<sup>21</sup> The analysis of the reflective journals of both cohorts of law students shows that there is likely to be increased student engagement by using popular culture<sup>22</sup> and role-play in the classroom.<sup>23</sup> Real life court visits and interactions outside the classroom should also be part of the learning experience.<sup>24</sup> It also supports the use of reflective journals for critical reflection and the analysis of ethics and professional roles.<sup>25</sup> The literature also demonstrates that foundation students are able to use journaling to reflect critically reflect upon ethical and professional issues, particularly through real court experiences and popular culture.<sup>26</sup>

The thesis argues that a pervasive method of incorporating ethics and professionalism into legal curricula has the benefits of reinforcing the teaching and learning of these topics.<sup>27</sup> The method suggests that teaching these topics from the first year of a legal degree allows for multiple learning opportunities rather than inclusion as a discrete unit at the end of the degree.<sup>28</sup> This research supports the dominant position in the literature that ethics and professionalism can aptly be studied from the foundation years of a law degree.<sup>29</sup> The data from the reflective journals also shows foundation law students can critically reflect about ethical and professional issues, where these issues are defined so broadly as to include what happens in the courtroom. The discourse analysis of the students' reflective journal texts reveals the need for improved ethical positioning and developing understandings about ethics and professionalism. Students show differing levels of understanding of these topics indicating that there is room for developing learning in these areas from foundation years. It also shows that with instruction, guidance and feedback in relation to learning students'

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<sup>20</sup> See, eg, Chapter 3 IV; Lonnie Brown, Jr, 'Lawyers Not Liars: A Modified Traditionalist Approach to Teaching Legal Ethics' (2006-2007) 51 *Saint Louis University Law Journal* 1119, Mary Lu Bilek, 'First Year Orientation,' International Forum on Teaching Legal Ethics and Professionalism <www.teachinglegalethics.org>; Deborah Rhode, 'Ethics by the Pervasive Method' (1992) 42 *Journal of Legal Education* 31, Diana Henriss-Anderson, 'Teaching Legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics*, (Cambridge University Press, 2007); Kelly Terry, 'Externships: A Signature Pedagogy' (2009) 59 *Journal of Legal Education* 240.

<sup>21</sup> Chapter 3 IV; See also Michael Robertson, 'Embedding 'Ethics' in Law Degrees' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 111; Coe and Dagilyte, above n 12; Daicoff, above n 12.

<sup>22</sup> Chapter 2 IV; Chapter 3 II-IV; Chapter 7 III A; Chapter 7 III K; Chapter 8 II.

<sup>23</sup> See, eg, Chapter 3 II A; Daicoff, above n 12; Chapter 7 III A; Chapter 7 IV C.

<sup>24</sup> Margaret Castles, Maureen Goldfinch and Anne Hewitt, 'Using Simulated Practice to Teach Legal Theory. How and Why Skills and Group Work can be incorporated into the Academic Legal Curriculum' (2007) 26 *University of Tasmania Law Review* 120; Jeff Giddings, 'Teaching the Ethics of Criminal Law and Practice' (2001) 35 *Law Teacher* 161; James and Field, above n 19, 501; Daicoff, above n 12.

<sup>25</sup> Chapter 3 I-IV; Chapter 4 I-III; Coe and Dagilyte, above n 12; Daicoff, above n 12.

<sup>26</sup> Coe and Dagilyte, above n 12; Daicoff, above n 12.

<sup>27</sup> Robertson, above n 21, 101, 110-112; Henriss-Anderson, above n 20.

<sup>28</sup> Robertson, above n, 110, 4.20.

<sup>29</sup> Chapter 3 I-IV; Rhode, above n 20.

knowledge and skills can be improved. The research has therefore contributed to why, how and when law students should be exposed to ethics and professional in their law degrees.<sup>30</sup>

### *B Why is and What Components of Critical Reflection are relevant to Legal Education?*

Critical reflection as a pedagogical device is a relatively recent addition to Australian legal pedagogy.<sup>31</sup> The literature shows that, despite lack of academic consensus on the meaning of critical reflection, it is seen as an essential skill for university graduates, particularly for law graduates.<sup>32</sup> This is evident by its inclusion in the TLOs.<sup>33</sup> Critical reflection is skills-based. The research in this thesis, based on the analysis of the journaling data, supports the argument that empowering and engaging law students with a more skills based, student-centred pedagogy in addition to knowledge-based pedagogy is effective.<sup>34</sup> Utilising these skills based techniques is also endorsed in the higher education literature as being effective for student learning and engagement.<sup>35</sup>

Experiences, analysis, evaluation, context and transformation are important for law students to understand because of their relevance to critical reflection. Experiential learning is recognised as important to education.<sup>36</sup> Analysis and evaluation are viewed as higher order thinking skills.<sup>37</sup> Contextualisation is frequently supported as an element of critical reflection,<sup>38</sup> both in higher education literature and legal education literature.<sup>39</sup> Transformation of perspectives is also evidence of higher levels of reflection.<sup>40</sup> The discourses in this research show the ability of the students to analyse, evaluate, contextualise and sometimes transform positions about experiences. The discourse analysis indicates that improvements can be made

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<sup>30</sup> See, eg, Robertson, above n 21, 99.

<sup>31</sup> Kift, Israel and Field, above n 14.

<sup>32</sup> Chapter 4 I-IV; See, eg, Vicki Waye and Margaret Faulkner, 'E-Portfolios and Legal Professional Attributes' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 239.

<sup>33</sup> Kift, Israel and Field, above n 14.

<sup>34</sup> Chapter 3 I-V; Chapter 4 I-IV; Daicoff, above n 12.

<sup>35</sup> Ibid.

<sup>36</sup> See, eg, Chapter 3 IV; Daicoff, above n 12; John Dewey, *Experience and Education* (Collier MacMillan, 1938); Donald Schon, *The Reflective Practitioner* (Basic Books, 1983).

<sup>37</sup> Benjamin Bloom, *Taxonomy of Educational Objectives* (Longmans-Green, 1956); James and Field, above n 19, 291-294.

<sup>38</sup> Stephen Brookfield, *The Skillful Teacher* (Wiley, 1990); David Boud, Rosemary Keogh and David Walker, *Reflection: Turning Experience into Learning* (KoganPage, 1985); Neville Hatton and David Smith 'Reflection in Teacher Education: Towards Definition and Implementation' <Reflection%20in%20Teacher%20Education.webarchive>.

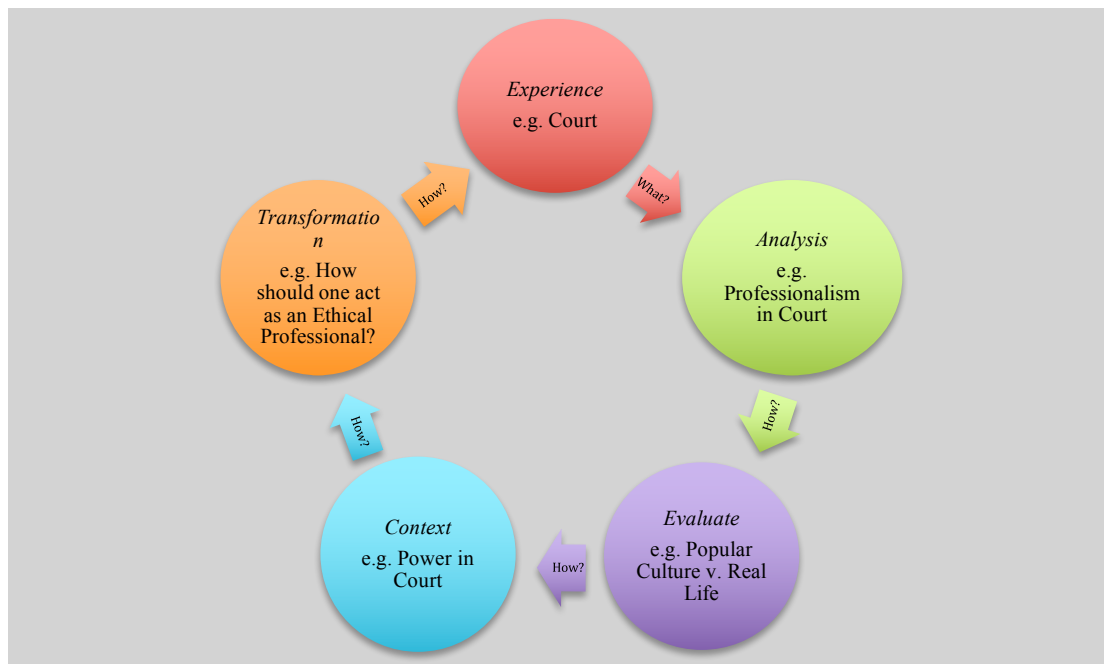
<sup>39</sup> Boud, Keogh and Walker, above n; David Boud and David Walker, 'Promoting Reflection in Professional Courses: the Challenge of Context' (1998) 23 *Studies in Higher Education* 191; Karen Hinett and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002).

<sup>40</sup> Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2014) 107; Hinett and Varnava, above n; Jennifer Moon, *Critical Thinking: An Exploration of Theory and Practice* (Routledge, 2007); Brookfield, above n 38; Mary Heath, 'Assessment Strategies' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 269; Mary Ryan and Michael Ryan, *Developing Reflective Approaches to Writing* (2012) <<http://www.qut.edu.au/research>>.

in these areas, prompting the development of a model for critical reflection as well as other techniques examined in the next sections of this chapter.

### *C What is an Appropriate Model for Critical Reflection for Foundation Law Students?*

This thesis has argued guidance and instruction are crucial to help students develop critically reflective skills. This can be achieved through the provision of a written guide on journaling and teaching using a critically reflective model.<sup>41</sup> Simple user-friendly guides for students assist the development of the reflective skills required for academic writing.<sup>42</sup> This thesis argues that experience, analysis, evaluation, context and transformation are important components of critical reflection.<sup>43</sup> These valued components of critical reflection from this research and informed by literature reviews produce a cyclical and prompt-based model to assist foundation law students with critical reflection,<sup>44</sup> illustrated in Figure 1.



**Figure 1: Model of Critical Reflection for Foundation Law Students**

The arrows of Figure 1 include prompt-based words ‘What? How? How? How? How?’ and are converted into more specific questions in Table 1 below. The questions in the Table 1 and examples in Figure 1 relate to court observations and popular culture. Legal educators can adapt and change questions to suit areas they want students to focus on. This makes the model flexible.

<sup>41</sup> Chapter 5 V; Chapter 8 II D; See, eg, Appendix 1.

<sup>42</sup> Chapter 4 I-IV See Appendix 1.

<sup>43</sup> Chapter 4 I-IV.

<sup>44</sup> Chapter 4 I-IV; Chapter 7 III H; Chapter 7 III I; Chapter 7 III M; Chapter 7 III N; Chapter 7 III O; Chapter 7 IV C; Chapter 7 IV D; Chapter 7 IV E; Chapter 7 IV F; Chapter 8 II-IV.

**TABLE 1: Prompt-Based Questions relevant to critical reflection about court, popular culture and learning for foundation law students**

Examples of Prompt Based Questions
What did the court <i>experience</i> illustrate to you about the law?
How does an <i>analysis</i> of legal profession in court assist with your understanding of the profession?
How does popular culture help you <i>evaluate</i> your court experiences?
How can you <i>contextualise</i> what you have learnt in terms of the power operation in court?
How have you <i>transformed</i> your position about issues such as ethical professionalism?

*D Is Reflective Journaling a Suitable Pedagogical Technique for Foundation Law Students Learning about Ethics and Professionalism?*

Journaling is a popular pedagogical tool to extend critical thinking in a number of higher education disciplines including law.<sup>45</sup> Findings from recent literature support the incorporation of journaling into higher education curricula including law.<sup>46</sup> Journaling can have benefits from the first year of university, especially in relation to the examination of transition periods from school to university or from work to university for individuals.<sup>47</sup> Further, reflective journaling allows the student to combine legal knowledge from legal educators with student-centred learning.<sup>48</sup> In this research reflective journaling assists foundation law students, in the two cohorts examined, to apply concepts learned in the classroom to court visits outside the classroom and provide engaging opportunities to learn about the real life professional roles of the judiciary and legal practitioners.<sup>49</sup> Visiting court is an appropriate, real life experience as it offers the students insight into how the legal system operates.<sup>50</sup>

<sup>45</sup> Chapter 5 shows reflective journaling in education, nursing, geography, business, health sciences, tourism, interior design, computing, information science, leadership courses and law. See also Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (ALTC, 2013) <<http://www.lawteachnetwork.org/resources/gpg--reflection.pdf>>.

<sup>46</sup> Daicoff, above n 12; Peter Coe and Egle Dagilyte, above n 12; Charlotte Ross et al, 'Evaluation of Nursing Students' Work Experience through the use of Reflective Journals' (2014) 17 *Mental Health Practice* 21; Vera Sheridan and Siobhan Dunne, 'The Bigger Picture: Undergraduate Voices reflecting on Academic Transition in an Irish University' (2012) 49 *Innovations in Education and Teaching International* 237; Safeera Hussainy, Kim Styles and Greg Duncan, 'A Practical Environment to Develop Communication Skills in Pharmacy Students' (2012) 76 *American Journal of Pharmaceutical Education* 202; Lenna Furtado and Dawnette Anderson, 'The Reflective Teacher Leader: An Action Research Model' (2012) 22 *Journal of School Leadership* 531; Etty Cohen-Sayag and Dita Fischl, 'Reflective Writing in Pre-Service Teachers Teaching: What does it promote?' (2012) 37 *Australian Journal of Teacher Education* 18; Simon Brooman and Sue Darwent, 'A Positive View of First-Year Undergraduate Reflective Diaries: Focusing On What Students Can Do' (2012) 13 *Reflective Practice: International and Multidisciplinary Perspectives* 517; Jane Parent and Kathy Lovelace, 'Creating a Learning Organization in the Management Classroom through Dialogue and Reflective Journaling' (2011) 6 *Business Renaissance Quarterly* 21; See also Chapter 5.

<sup>47</sup> The analysis in Chapters 7 and 8 shows student eventual empowerment in relation to their own learning after initial difficult transition periods; See, eg, Susan Armstrong and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 207.

<sup>48</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 5; Waye and Faulkner, above n 32, 250.

<sup>49</sup> Chapter 7 II ; Chapter 7 III; Chapter 7 IV; Chapter 8 I-V.

<sup>50</sup> Chapter 3 II A; Chapter 3 VI, Table 2; Chapter 7 II G; Chapter 7 IV B; Chapter 8 II.

In this research the validity of using reflective journaling is revealed as an appropriate pedagogical tool, as it allows students to analyse many aspects of law, including effective evaluation of courts, to question the law, particularly in relation to ethics and professionalism, and to make judgments. It can therefore help facilitate deep and active learning through such analysis and questioning.<sup>51</sup> Reflective journaling needs to be supplemented with other pedagogical activities to overcome possible limitations and to provide variety in terms of pedagogical techniques.<sup>52</sup> This research, supported by the literature review indicates successful pedagogical techniques include guest speakers,<sup>53</sup> problem solving,<sup>54</sup> class reflection time,<sup>55</sup> reflective papers and/or reflective exercises.<sup>56</sup> This research also shows incorporating topics into curricula such as thinking like a lawyer provide positive, skill-based professional direction involving role-play or oral presentation activities.<sup>57</sup> These activities have been incorporated into Table 2 and Table 3 below.

#### *E What does an analysis of Foundation Law Students Journals reveal in terms of Legal Pedagogy?*

The discourse analysis of reflective journaling shows that students use journaling to deepen their learning about legal topics.<sup>58</sup> The language used in the journals reveals an ability to analyse the legal world, in terms of the power and influence of legal educators, the judiciary and legal practitioners. The analysis reveals the pedagogical strategies that students find effective.<sup>59</sup> Discourses common to both the 2009 and 2011 cohorts are described in the discourses of engagement, court experience, ethics and thinking like a lawyer.<sup>60</sup>

The discourse of engagement for both the 2009 and 2011 cohorts show students thoroughly appreciate variety in relation to the course delivery, which leads to a livelier degree of engagement in their legal studies. Different learning experiences accommodate a plethora of

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<sup>51</sup> James and Field, above n 19, 288-292.

<sup>52</sup> Hatton and Smith, above n 38; Dewey, above n 36; Schon, above n 36; Hinett and Varnava, above n 39; Moon, above n 40; Biggs and Tang, above n 3; Brookfield, above 38.

<sup>53</sup> Chapter 7 III A; Chapter 7 IV B; Chapter 8 II; Claire Macken, 'Law Student Engagement: The Curricular and Co-Curricula Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 311; Coe and Dagilyte, above n 12; James and Field, above n 19, 3-38; Henriss-Anderson, above n 20; Suzette Barnaby, 'Legal Ethics for the Real World: A Model for Engaging First Year Law Students' (2004) 4 *Queensland University of Technology Law and Justice Journal* 219; Rhode above n 20; Michael Mushin and Lisa Smith, 'The Professor and the Judge: Introducing First-Year Students to the Law in Context' (2014) 63 *Journal of Legal Education* 481; Neil Hamilton and Lisa Montpetit Brabbit, 'Fostering Professionalism through Mentoring' (2007) 57 *Journal of Legal Education* 102.

<sup>54</sup> Chapter 7 IV C; Chapter 8 III-IV; Michelle Sanson, Law Graduate Attributes' Workbook <[www.griffith.edu.au](http://www.griffith.edu.au)>; Des Butler, 'Technology: New Horizons in Law Teaching' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 490; Mushin and Smith, above n 53.

<sup>55</sup> Chapter 7 III D; Chapter 7 IV H; Chapter 8 II-IV.

<sup>56</sup> Above n 55.

<sup>57</sup> Chapter 7 III B; Chapter 7 IV C; Chapter 8 III.

<sup>58</sup> Chapter 8 I-V.

<sup>59</sup> Chapter 7 I-IV; Chapter 8 I-V.

<sup>60</sup> Chapter 8 II-IV.

students' varied tastes.<sup>61</sup> For example, students have mixed reactions to reflective journaling.<sup>62</sup> Both cohorts like to be entertained. Different types of lectures and guest lecturers make the learning experience more diverse and able to cater for different learning styles and student preferences.<sup>63</sup> Guest lecturers from legal practice such as judges, magistrates and legal practitioners provide honest and influential accounts of practice on the topics of ethics and professionalism.<sup>64</sup> Many students like hearing honest appraisals as it allows access to lawyers' perspectives about legal practice. This can discourage some students from continuing to study law as a career but for other students it leads them towards this career path.<sup>65</sup> Guest lecturers are valued more so for learning about the profession and the skills needed for it by the 2011 cohort than the 2009 cohort.<sup>66</sup>

Small, supportive, interactive settings in tutorials assist with engagement through the development of social connections and highlight the value of student-centred learning.<sup>67</sup> An appreciation of feedback, direction, instruction and guidance for learning is recognised both in the academic literature and also in the discourses constructed from the journal texts in both cohorts. Group work involving discussion and debate has potential for professional skill development in these areas including active learning, autonomy, the opportunity to assist student development and preparation for employment.<sup>68</sup> Communication and collaboration skills are integral for effective group work and are endorsed by the TLOs.<sup>69</sup> A sense of belonging is also important for students to develop social connectedness in a new environment, which is often perceived as most daunting. It is therefore not surprising that this discourse also reveals engagement with positive and enthusiastic teaching teams to encourage student learning. Both cohorts appreciate supportive settings with the 2011 cohort commenting in more depth about this topic than the 2009 cohort.<sup>70</sup>

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<sup>61</sup> Chapter 7 III A; Chapter 7 III B; Chapter 7 IV A; Chapter 8 II-IV.

<sup>62</sup> Chapter 7 III D; Chapter 7 III K; Chapter 7 IV G; Chapter 7 IV H.

<sup>63</sup> Chapter 3, Table 1; Chapter 7 III A; Chapter 7 IV A; Chapter 8 II; Armstrong and McNamara, above n 47; Bobbi J Boyd, 'Name that Sanction,' International Forum of Teaching Ethics and Professionalism, <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Castles, Goldfinch and Hewitt, above n 24; Coe and Dagilyte, above n 12; Nancy Cook, 'Story Exchange Exercise' International Forum of Teaching Ethics and Professionalism <[www.teachinglegalethics.org](http://www.teachinglegalethics.org)>; Linda Haller, 'Reading Reported Cases through a Legal Ethics Lens' in Michael Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 191; John Ratnaswamy, 'Teaching Ethics Through Simulation Method' *The Benchers* (2011) <[www.innsocourt.org/Content/Default.aspx?Id=5944](http://www.innsocourt.org/Content/Default.aspx?Id=5944)>; Paula Baron, 'The Emperor's New Clothes: From Atticus Finch to Denny Crane' in Francesca Bartlett, Reid Mortensen and Kieran Tranter (eds), *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2011) 85; Claire Macken and Madeleine Dupuche, *Law Essentials: Foundations in Australian Law* (LawBook Co, 2012).

<sup>64</sup> Chapter 3, Table 1; Chapter 7 III A; Chapter 7 IV A; Chapter 8 II; Mushin and Smith, above n 53.

<sup>65</sup> Chapter 7 III-IV; Chapter 8 II-IV.

<sup>66</sup> Chapter 8 II.

<sup>67</sup> Ibid.

<sup>68</sup> Armstrong and McNamara, above n 47; Boyd, above n 63; Castles et al, above n 24; Coe and Dagilyte, above n 12; Cook, above n 63; Haller, above n 63; Ratnaswamy, above n 63; Kift, Israel and Field, above n 24.

<sup>69</sup> Above n.

<sup>70</sup> Chapter 7 III F; Chapter 7 IV B; Chapter 7 IV D; Chapter 8 II.

The discourse analysis also shows that students find popular culture engaging.<sup>71</sup> Students compare and contrast popular culture with the court experience using the evaluation to help understand key components of the course.<sup>72</sup> The influence of popular culture is evident for both cohorts but in particular for the 2009 cohort. This is likely to be because the students in the 2011 cohort were not specifically directed to discuss popular culture in the criteria rubric they were given. The critical analysis of popular culture is a pedagogical technique supported by the academic literature as beneficial to the legal curriculum to learn about ethics and professionalism.<sup>73</sup>

This discourse analysis supports the extensive literature on learning and the reflective impact of real world authentic learning environments.<sup>74</sup> It supports the courtroom as a supplement to the classroom. It reveals that it provides the opportunity for reflective experience and to develop ideas about ethics and legal professionalism through the critically reflective lens of the reflective journal.<sup>75</sup> The court setting has the capacity to make the classroom experiences about law more authentic. The discourse of court experience reveals that observations enable students to compare theoretical perspectives about legal institutions with real life experiences. Students also like to compare and contrast the court hierarchy, tending to value the formality of the Supreme Court over informality of the Magistrates' Court.<sup>76</sup> Formality is linked with respect. Informal environments are more frequently equated with disrespect.<sup>77</sup> Further, real world court experiences<sup>78</sup> are not only engaging but can change awareness about the operations of the profession.<sup>79</sup>

The discourse of ethics reveals student attitudes towards ethics through their examination of the themes in the course, court observations and popular culture.<sup>80</sup> The level of analysis of ethics varies with some 2011 students able to examine the subject at individual, institutional, cultural and societal levels.<sup>81</sup> Students reveal ethical stances in relation to future legal practice. They evaluate the topic of making profit at the possible cost of professionalism.<sup>82</sup> Many students take a high moral and ethical stance in relation to future legal practice,

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<sup>71</sup> Chapter 8 II.

<sup>72</sup> Ibid.

<sup>73</sup> Baron, above n 63; Macken and Dupuche, above n 63; Julian Webb, 'Taking Values Seriously: The Democratic Intellect and the Role Values Play in Law School Curriculums' in Mike Robertson et al (eds), *The Ethics Project in Legal Education* (Routledge, 2011) 134.

<sup>74</sup> See, eg, Castles et al, above n 24; James and Field, above n 19; Mushin and Smith, above n 53.

<sup>75</sup> Above n; Chapter 8 II.

<sup>76</sup> Chapter 8 II-IV.

<sup>77</sup> Chapter 8 II.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Michael King et al, *Non-Adversarial Justice* (The Federation Press, 2<sup>nd</sup> ed, 2014) 282; James and Field, above n 19, 31, 354-358; Macken, above n 53, 312, 328 [12.30].

<sup>81</sup> Chapter 8 III.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.



questioning their motives for making money and profit.<sup>83</sup> They generally appear interested in learning about real life practice stories and the ethical issues they may face in the future as legal practitioners.<sup>84</sup>

Students generally like to judge and dissociate themselves from defendants and sometimes use language that is not always respectful. The discourses on judgment and analysis shows that the 2011 cohort tends to give more detailed explanations for judgments and provide greater analysis. There is a tendency from both cohorts to judge defendants relatively harshly on the grounds of dress, demeanour, language and socio-economic class. Whilst some students reveal an ethics of care towards defendants a minority from both cohorts do not. This may require greater teaching effort in assisting students to understand more about the ethical duties to clients.

The discourse of thinking like a lawyer is valuable for foundation law students' curriculums and is identified as one of the most important outcomes of studying law.<sup>85</sup> This research shows that including techniques such as the storytelling of guest lecturers<sup>86</sup> and role-play can be engaging.<sup>87</sup> These techniques help to relocate students from the university classroom into the real world of law. Using skills relating to thinking like a lawyer gives the students an idea of whether they like performing in this way and whether legal practice might be an appropriate career path. Students tend to find this exciting, challenging and confronting.<sup>88</sup> This is evident in commentaries in the journals in relation to the oral presentations, which raise many problems such as those concerning their physical presentation, where they are required to dress, act and present as a lawyer.<sup>89</sup> A number of students describe an immense sense of achievement by this role-playing exercise.<sup>90</sup> Such a discourse also allows them to exercise critical thinking skills, vital to legal practice. The 2011 cohort relates to thinking like a lawyer more deeply than the 2009 cohort because they are involved in oral problem solving role-play, where they are required to use the skills that are needed by a legal practitioner.

Critical thinking skills need to be specifically taught and not merely be assumed to develop over the course of the degree.<sup>91</sup> One way this can be done is through focusing on conceptual guidance through encouraging students to learn about learning from texts on academic skills

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Nick James, 'Logical, Critical, Creative: Teaching Thinking Skills to Law Students' (2012) 12 *QUT Law and Justice* 68.

<sup>86</sup> Chapter 7 III A; Chapter 7 IV B; Chapter 7 IV C; Chapter 8 II.

<sup>87</sup> Above n 86.

<sup>88</sup> Ibid.

<sup>89</sup> Chapter 8 III.

<sup>90</sup> Ibid.

<sup>91</sup> James, above n 85, 84.

and explicit teaching about important concepts such as analysis and evaluation. This research supports and adds to this position in that it endorses the importance of guidance with critical reflection and promotes a model that encourages analysis and evaluation as part of critical reflection. It adds an extra dimension to the notion of creative legal thinking<sup>92</sup> through reflective journaling as a creative legal thinking device.

The discourse analysis reveals the importance of component of power in legal education. The judiciary, legal educators, students and popular culture have the power to influence student learning. Legal educators include guest lecturers, peers in tutorial groups and the media. Power is asserted through specialist knowledge, by the judiciary over those within in the courtroom and by the law students through judgmental comments. In the discourse of judgment students generally like to judge on a multiplicity of topics including components of the course, lecturers, tutors, guest lectures, judges, magistrates, defendants in court assessment, reflective journaling, fellow law students and themselves, often harshly.<sup>93</sup> Occasionally students see themselves as superior to defendants as the language used by the students towards defendants is not always respectful and/or they do not want to be mistaken for a defendant.<sup>94</sup> This shows disassociation from defendants. For legal educators this means any or all of these powerful figures can be appropriately included within foundation law units.

### III RECOMMENDATIONS FOR TEACHING AND LEARNING ETHICS, PROFESSIONALISM AND CRITICAL REFLECTION: PEDAGOGICAL TECHNIQUES FOR LEGAL EDUCATORS AND RESEARCHERS

A package of tools for legal educators to teach critical reflection, ethics and professionalism in the foundation year is provided in Table 2. It is developed from the research in this thesis, informed by the literature reviews. It shows pedagogical techniques and suggested topics for teaching in these areas. The blend of traditional and less traditional activities, both inside and outside the university classroom, include a variety of different types of lectures, the use of popular culture, real court room experiences, role-play, guided reflective journaling and interactive small group tutorials.

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<sup>92</sup> Ibid 86.

<sup>93</sup> Chapter 7 IV D; Chapter 8 IV.

<sup>94</sup> Above n 93.

**TABLE 2: Pedagogical Techniques and Topics for Teaching Critical Reflection, Ethics and Professionalism to Foundation Law Students**

Pedagogical Technique	Topics	Techniques to supplement other Pedagogical Techniques
<b>Lectures:</b>  <b>Traditional lectures</b> from law lecturers  <b>Guest lecturers</b> <sup>95</sup>  <b>Interactive lectures</b> from either law lecturers or guest lecturers	<b>Legal knowledge</b> Case law on misconduct case law, roles and ethical duties of legal practitioners & access to justice  <b>Legal Skills</b> <sup>96</sup> Critical reflection, analysis, evaluation, contextualisation, judgement & problem solving <sup>97</sup>  <b>Ethical Values</b> for students and legal practitioners	<b>Tutorials:</b> on the lecture topics  <b>Authentic Experiences:</b> outside the classroom  <b>Study Groups:</b> <sup>98</sup> Both inside and outside the classroom  <b>Reflective Journaling:</b> About the lecture topics, supported by instruction, guidance, feedback and dialogue & use of a criteria rubric and a guide on critical reflection
<b>Tutorials:</b>  Interactive  Dialogue  Small group work <sup>99</sup>  Debates  Oral presentations & Role-play <sup>100</sup>  Problem solving	See topics above  Treating clients and students in a professional and ethical manner  A model on critical reflection- prompt-based e.g. the model developed in this research <sup>101</sup>  Popular culture <sup>102</sup> (Films, the internet, television, novels)	<b>Lectures:</b> on the lecture topics  <b>Authentic Experiences</b> outside the classroom  <b>Study Groups:</b> Both inside and outside of the classroom  <b>Reflective Journaling:</b> About the lecture and tutorial topics, supported by instruction, guidance, feedback & use of a criteria rubric and a guide on critical reflection
<b>Authentic Experiences:</b> <sup>103</sup>  Real life court observation	Roles of judges & legal practitioners  Access to justice Ethics and professionalism in court	<b>Lectures and Tutorials</b>  <b>Reflective Journaling</b> on the lecture and tutorial topics and court experiences, supported by instruction, guidance, feedback and use of a criteria rubric and a guide on critical reflection

<sup>95</sup> Hamilton and Montpetit Brabbit, above n 53; Henriss-Anderson, above n 20; Deborah Rhode, 'Teaching Legal Ethics' (2007) 51 *Saint Louis University Law Journal* 1043; Lynda Crowley-Cyr 'Reflexive Professionals or Disempowered Technicians? A Case Study of the Risks of McLearning in a Regional Law School' (2008) 1 *Journal of the Australasian Law Teachers Association* 299; Macken, above n 79, 328; Mushin and Smith, above n 53; James and Field, above n 19; Ainslie Lamb, John Littrich and Katrina Murray, *Lawyers in Australia* (Federation Press, 2015) 217; Chapter 7 II A; Chapter 7 III B; Chapter 7, Table 5; Chapter 7, Table 6; Chapter 8 III B; Chapter 8 Figure 1.

<sup>96</sup> Barnaby, above n 53; Armstrong and McNamara, above n 63; Mushin and Smith, above n 53; Lucy Maxwell 'How to Develop Law Students' Critical Awareness- Change the Language of Legal Education' (2012) 22 *Legal Education Review* 99; James and Field, above n 19; Chapter 7 III D; Chapter 8 IV.

<sup>97</sup> Brown, above n 20; Bilek, above n 20; Hamilton and Montpetit Brabbit, above n 53; Parker and Evans, above n 20; Suzanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving And Sustaining Excellence In A Changed And Changing Environment* (Australian Learning and Teaching Council, 2009); Mushin and Smith, above n 53. Chapter 7 II F; Chapter 7 III B; Chapter 8 III A.

<sup>98</sup> Above n.

<sup>99</sup> Barnaby, above n 53; Bilek, above n 53; Rhode above n 95; Parker and Evans, above n 20; Crowley Cyr, above n 95; Butler, above n 53; Robertson, above n 21.

<sup>100</sup> Owen and Davis, above n 97.

<sup>101</sup> Waye and Faulkner, above n 32, 239; Chapter 4 I-IV; Chapter 5 I-VI; Chapter 9 Figure 1; Chapter 9, Table 1.

<sup>102</sup> Henriss-Anderson, above n 20; Michael Asimow and Shannon Mader, *Law and Popular Culture: A Course Book* (Peter Lang, 2<sup>nd</sup> ed, 2013); Rhode, above n 95; Macken, above n 53; Owen and Davis, above n 97; Cassandra Sharp, 'Changing the Channel - What to do with the Critical Abilities of Law Students as Viewers' (2004) 13 *Griffiths Law Review* 185; Chapter 7 II K; Chapter 7 III G; Chapter 8 V.

<sup>103</sup> Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2014) 25-26; Chapter 7 II G; Chapter 7 III C; Chapter 8 IV.

This next section of this research proposes a range of six pedagogical techniques to improve and enhance foundation students' engagement with the teaching of ethics, professionalism and critical reflection, as illustrated in Table 3. The second column suggests extended research related to these areas and the third section suggests further effective activities for inclusion in the law school curriculum, derived from the research and informed by the literature.

There are many areas suggested for further research. Table 3 incorporates pedagogical tools as a result of this research together with other suggested engaging activities not used in this research but ripe for further research on legal pedagogy. The new activities have been the subject of innovations in legal education and reflect the influence new technologies are having on educational practices. For example, courses are being undertaken on-line rather than with face-to-face delivery.<sup>104</sup> Self-assessed class debates also allow students a more active and direct role in assessment activities. The academic literature supports involvement of students with assessment, in the choice and undertaking of various assessment tasks.<sup>105</sup> Researchers could examine reflective journals in relation to engagement with these activities and use surveys, interview or focus groups to glean which activities students find the most engaging and valuable for learning. They could also focus research on small group discussions about ethics and professionalism in the real courtroom and students' evaluation of those experiences with popular culture.

Students write and develop their perspectives as they move through different subject areas and acquire greater legal knowledge and skills to reflect and critically analyse their experiences.<sup>106</sup> This suggests that a pervasive approach to teaching ethics, professionalism and critical reflection is appropriate for students continued development of skills in these areas.<sup>107</sup> The reflective journal could be used as a technique throughout the degree, assessed each year as a part of the total assessment for each unit in both the foundation and capstone years.<sup>108</sup> Constructivist grounded theory and discourse analysis could be used to examine whether journaling techniques improve over time by comparing and contrasting journal from different year groups in the law degree. This would allow students to reflect frequently on ethical perspectives throughout their degree, as part of a pervasive approach to teaching

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<sup>104</sup> Rita Shackel, 'Beyond the Whiteboard: E-learning in the Law Curriculum' (2012) 12 (1) *QUT Law and Justice* 105; Anne Matthew 'Managing distraction and attention in diverse cohorts: 21<sup>st</sup> century challenges to law school engagement' (2012) 12 *QUT Law and Justice* 45.

<sup>105</sup> See, eg, Dorothy Spiller *Assessment Matters: Self-Assessment and Peer Assessment* (The University of Waikato, 2012) <<http://www.waikato.ac.nz>>.

<sup>106</sup> Chapter 7 II H; Chapter 7 II I; Chapter 7 II J; Chapter 7 II N; Chapter 7 II O; Chapter 7 III E; Chapter 7 III G; Chapter 8 IX; Chapter 8 X.

<sup>107</sup> Chapter 3 I-V.

<sup>108</sup> Armstrong and McNamara, above n 47, 219.

ethics, as has been endorsed in the literature.<sup>109</sup> This would also align with present threshold learning outcomes and further allow the students to have a portfolio of work demonstrative of ethical perspectives relevant to graduate learning outcomes.<sup>110</sup>

Undertaking more explicit research into the effect guidance, instruction and feedback has on journaling would be valuable to confirming improvements with journaling. This could be done intermittently in progressive cohorts of year groups to examine if standards of journaling improve by using the same type of guidance, instruction and feedback in terms of developing ethical and professional legal attitudes. Were such an approach adopted, research on the efficacy of the approach for legal pedagogy could be undertaken.

This research developed a reflective model in Figure 1 of this chapter. Further research could investigate how students are able to understand, use and relate to this model. The model was used for 2014 Foundation students at UTAS meaning that there would be data available for examination provided consent and ethics clearance was granted. Table 3 shows techniques for teaching and researching ethics, professionalism and critical reflection, including incorporation of the model.

**TABLE 3: Techniques for Teaching and Researching Ethics, Professionalism and Critical Reflection in Legal Education**

Recommended pedagogical techniques for foundation students and beyond	Research for Foundation Year and beyond	Recommended activities for teaching ethics, professionalism and critical reflection
<b>Use a variety of different of Lectures and Guest Lectures</b> topics relating to the ethics, professionalism and current legal practice issues	Survey or interview students regarding pedagogical preferences including lectures, guest lectures, the use of popular culture, court observations, role-play, oral presentations, reflective journaling and small group work.	Virtual Experiences Communication from Information Technology <sup>111</sup>  Guests from the profession as mentors at University or on-line
<b>Incorporate Popular Culture</b> (e.g. for critical reflection about the ethics and professionalism)	Involve law students with assessment of activities relating to popular culture (e.g. Evaluating popular culture) <sup>112</sup>	Popular culture (video clips, television programs, You Tubes, excerpts from texts- reading cases through an ethical lens) <sup>113</sup>
<b>Reflect on Real Court Experiences</b> (e.g. for critical reflection)	Use of Constructivist Grounded Theory and Discourse Analysis to examine legal pedagogy	Class/ Small group discussions about court experiences Work experiences (attending court with a legal practitioner)
<b>Include thinking like a lawyer as a course concept; role play and oral presentations</b>	Use of reflective journal as an ethics journal throughout the course of a law degree to assess development of ethics and professionalism	Class Debates on ethical/professional issues <sup>114</sup> or mock trials <sup>115</sup>

<sup>109</sup> See, eg, Robertson, above n 21, 100-117; Rhode, above n 14.

<sup>110</sup> Johnstone, above n 48, 1-2; Waye and Faulkner in Kift et al, above n 32, 239-266.

<sup>111</sup> Butler, above n 54, 490; See, eg, Shackel, above n 104; Matthew, above n 104.

<sup>112</sup> David Boud 'Assessment, experience and reflection' < <http://www.open.ac.uk/cefl-workspace/>>; David Boud and Nancy Falchikov, *Rethinking Assessment in Higher Education*. (Routledge, 2007); Spiller, above n 105.

<sup>113</sup> See, eg, Haller, above n 63; Baron, above n 66; Macken and Dupuche, above n 63; Castles et al, above n 24; Chapter 7 II K; Chapter 7 III G; Chapter 8 V.

<sup>114</sup> Armstrong and McNamara, above n 47; Crowley- Cyr, above n 95.

<sup>115</sup> Ratnaswamy, above n 63.

<b>Recommended pedagogical techniques for foundation students and beyond</b>	<b>Research for Foundation Year and beyond</b>	<b>Recommended activities for teaching ethics, professionalism and critical reflection</b>
<b>Encourage Reflective Journaling</b> with guidance and instruction supported by the Hiller model of critical reflection	Teach and use the Hiller model of critical reflection in this chapter and examine its effectiveness  See the box above and the box below	Simulations e.g. setting up the classroom/ tutorial to simulate a law firm to undertake legal problem solving scenarios <sup>116</sup>
<b>Teach Interactive Tutorials and Small Group Work</b>	Use of critical reflective interventionist research based techniques to improve legal pedagogy	Critically reflective class/ small group discussions on ethical dilemmas

#### IV CONTRIBUTIONS TO TEACHING, LEARNING AND RESEARCH IN LEGAL EDUCATION

This research has substantial relevance and implications for teaching, learning and research within legal education. Firstly, foundation law educators are provided with recommendations for teaching ethics, professionalism and critical reflection.<sup>117</sup> Secondly, the implementation of the recommendations is likely to assist foundation students begin to understand and develop standards required to satisfy TLOs in relation to ethics, professionalism and critical thinking.<sup>118</sup> This also allows for constructive alignment between course learning outcomes, strategies and assessment.<sup>119</sup> Thirdly, Course coordinators, Heads of Law Schools, Associate Deans of Teaching and Learning in law are provided with suggestions for embedding ethics, professionalism and critical thinking into legal curriculums therefore complying with national standards. Fourthly, in terms of research in legal education, this work makes a significant contribution towards research in a number of areas including teaching ethics, professionalism and critical reflection together with supporting the use of reflective journals as one tool to do so. Critical reflection is one way both students and educators can immerse themselves in their own learning environments with the aim of improving and developing it. The research methodology promotes the expansion of legal education research methodologies to include constructivist grounded theory and discourse analysis.

##### *A Implications for Legal Educators*

This research shows that ethics and professionalism should be topics of high priority for legal scholarship and that teaching these topics can be included in curriculums from the foundation years onwards.<sup>120</sup> The research also shows that the 2009 and 2011 students like popular culture, court observations and a supportive environment, whereas the 2011 students also find

<sup>116</sup> Barnaby, above n 53; Chapter 7 III D; Chapter 8 IV.

<sup>117</sup> Table 1; Table 2.

<sup>118</sup> Johnstone, above n 48, 36.

<sup>119</sup> Biggs and Tang, above n 3, 28-29.

<sup>120</sup> Chapter 2 I-V; Chapter 3 I-V; Chapter 7 III H; Chapter 7 IV E; Chapter 8 III.

role-play as lawyers engaging.<sup>121</sup> These topics, activities and environments are likely to be highly effective for legal educators. The research demonstrates that while reflective journaling can be beneficial for students learning about ethics and professionalism, it also shows journaling has limitations, in terms of degrees of difficulty and lack of support from some students.<sup>122</sup> In order to overcome such limitations the research analysis suggests variety with legal pedagogy and supplementing journaling with other techniques including adequate guidance and instructions is important. It encourages legal educators to experiment with a variety of activities given variety is likely to engage foundation law students to consider more seriously the implications of ethics and legal professionalism.<sup>123</sup> Variety with course delivery is also likely to engage foundation students, as it has done so with the students in this research.

The research recognises critical reflection needs to be specifically taught given its variable nature as an academic concept.<sup>124</sup> A review of the literature together with the research informs the development of a prompt-based reflective model for assisting foundation students to reflect critically on ethics and professionalism.<sup>125</sup> Building on the recent work of other legal educators,<sup>126</sup> this research provides a model accessible to legal educators and foundation law students. Students can use this model to assist them with critical reflection, including critically reflecting in journals. Legal educators can adapt the questions in the model to appropriate and relevant topics.

#### *B Assisting Foundation Students Develop Standards for Professional Practice*

Legal education experts recognise that the TLOs have become increasingly necessary to implement in legal education for future professional practice.<sup>127</sup> Several of the TLOs relate to the subjects of this research, ethics, professionalism and critical reflection.<sup>128</sup> A foundation year, which successfully embeds the TLOs into the course, enhances the opportunity of the students acquiring and developing legal knowledge and skills in these areas. This research does this in three key ways. Firstly, focusing on the areas of ethics and professional in the foundation year, in traditional and less traditional pedagogical ways, allows students the opportunity to become engaged by knowledge and skill development in the areas. This is advantageous to the student as it may help to influence future career choices within or outside

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<sup>121</sup> Chapter 8 IV.

<sup>122</sup> See perceptions of journaling in Chapter 5 V; Chapter 7 II D; Chapter 7 II K; Chapter 7 II N; Chapter 7 III I; Chapter 7 III F; Chapter 7 III G; Chapter 8 II D.

<sup>123</sup> Ibid.

<sup>124</sup> Chapter 4 I-III; Brookfield, above n 38, 94.

<sup>125</sup> Ibid.

<sup>126</sup> Waye and Faulkner, above n 32, Heath, above n 40; James and Field above n 19.

<sup>127</sup> Nick James, 'Embedding Graduate Attributes in Subjects: Critical Thinking' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 69.

<sup>128</sup> Kift, Israel and Field, above n 14, TLO1, TLO2, TLO 6.

the legal profession. Secondly, in alignment with other legal academics' perspectives, it also recognises the role that critical reflective practices have in facilitating independent learning, awareness about learning and how to improve it.<sup>129</sup> Thirdly, weaving these topics through the curriculum from the foundation year is likely to facilitate more adequately constructive alignment processes to assist both student learning and future professional practices.

#### *C Implications for Heads of School, Course coordinators and Associate Deans of Teaching and Learning*

The general framework for setting national standards for academic learning and teaching has been set up in a number of ways. It includes LTAS, the Higher Education Standards Panel, TESQA and AQF. Under LTAS, Heads of Schools, Course coordinators and Associate Deans of Teaching and Learning have designated responsibilities in relation to preserving and implementing standards.<sup>130</sup> Ethics, professionalism and critical reflection need to be included in the law curriculum as they form part of these standards, as TLOs.

While this research argues that ethics and professionalism should be included pervasively from foundation years, it also acknowledges coverage in a capstone ethics subject at the end of the law degree.<sup>131</sup> This research is likely to be highly valuable to those with delegated responsibilities mapping the use of the TLOs across the curriculum.<sup>132</sup> It gives research-led guidance for the appropriate embedding of the TLOs across the legal curriculum. It does this by suggesting that embedding these attributes can be done in foundation years through using a variety of techniques, such as those recommended in Table 2 in this chapter. Further, the research recommends ways to include critical reflection, from the foundation years.<sup>133</sup>

#### *D Implications for Legal Education Research*

There are three main ways this research impacts on legal education researchers. Firstly, positive developments are being undertaken in research-led teaching and therefore interventionist strategies by educators, such as those undertaken early in this research, can be beneficial. Secondly, constructivist grounded theory and discourse analysis have not typically been undertaken in legal education in Australia. These approaches offer innovation and transparency in terms of research methodology. Constructivist grounded theory has been used more widely in social justice research<sup>134</sup> and therefore is arguably suited to ethical legal

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<sup>129</sup> James and Field, above 19.

<sup>130</sup> See <<http://disciplinestandards.pbworks.com>>. The disciplines include Architecture, Arts, Social Sciences and Humanities, Building and Construction, Business, Management and Economics, Creative and Performing Arts, Education, Engineering and ICT, Health, Law and Science.

<sup>131</sup> Robertson, above n 21, 100-117; Chapter 3 I-V.

<sup>132</sup> Kift et al, above n 19, 51.

<sup>133</sup> James, above n 127, 70-98.

<sup>134</sup> Charmaz, above n 5, 359.



inquiry with social justice aims. Discourse analysis also provides valuable insight into the students' constructions of legal education and how their perspectives can potentially be transformed and enhanced.<sup>135</sup> In conjunction, these two approaches provide vivid insights into the data.<sup>136</sup> Thirdly, this research facilitates analysis of other areas of focus for further research, developed in Table 3.<sup>137</sup>

## V CONCLUSION

Law schools need to be relevant, diverse, integrated and innovative.<sup>138</sup> They also need to be outcome-focused, evidence-based and connected to the practice of law.<sup>139</sup> This research shows how these goals can be developed in relation to teaching ethics, professionalism and critical reflection in law from the foundation year. While this research does not argue that law students will accordingly become ethical, professional and critically reflective practitioners, it takes an important step in highlighting the relevance of ethics, professionalism and critical reflection to the law student. It aims at providing the best possible beginning to educating the law student about critical reflection, ethical and professional behaviour in diverse, integrated and innovative ways.<sup>140</sup> It also highlights to stakeholders such as government, the profession and the community the high priority role legal education should take with providing current research-led best legal educational practices, connected to the practice of law.

It provides four evidence based recommendations focused on intended outcomes in the relevant TLOs. Firstly, ethics and professionalism should be taught from foundation years onwards to show students the parameters of expected ethical and professional standards, the consequences of non-compliance with standards and the positive aspects of skill development in these areas. It promotes a pervasive approach of incorporating these topics through the curriculum via traditional lectures as well as less traditional pedagogical techniques. Legal educators and researchers are provided with a legal pedagogical toolbox of both types of pedagogical techniques, including the reflective journal.<sup>141</sup>

Secondly, critical reflection is highlighted as an important legal skill for student's learning and future legal practice. It is improved when there is guidance, instruction and constructive alignment between course learning outcomes, technique and assessments.<sup>142</sup> Experiences,

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<sup>135</sup> Chapter 8 I-V.

<sup>136</sup> See Chapter 7 I-VI; Chapter 8 I-V.

<sup>137</sup> Chapter 9, Table 2.

<sup>138</sup> Eugene Clarke, 'Looking Forward: Challenges Facing Legal Education in the 21<sup>st</sup> Century' (2010) 3 *Phoenix Law Review* 461.

<sup>139</sup> Ibid.

<sup>140</sup> D'Silva, above n 10.

<sup>141</sup> Chapter 9, Table 2.

<sup>142</sup> Biggs and Tang, above n 3, 28-29.

analysis, evaluation, context and transformation are important for law students to understand because of their relevance to critical reflection, as endorsed in this research and the literature reviews. These elements of critical reflection are converted into a flexible, cyclical prompt-based model of critical reflection for foundation law students, which is included within this chapter.

Thirdly, reflective journaling can assist both students with learning and educators with teaching. It allows students to be more reflective about their experiences and learning. Educators can also be more critically reflective about their own practices as they are able to view the legal education landscape through the ‘lenses of the students’ eyes’.<sup>143</sup> Reflective journaling needs to be supplemented with other pedagogical techniques to provide a more diverse curriculum. Fourthly and finally, scrutiny of the discourses, emerging from students’ journal texts, facilitates insights towards an enriching, engaging legal pedagogy with pedagogical techniques, strategies and activities, incorporated into the toolboxes of pedagogical techniques provided in this chapter.<sup>144</sup>

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<sup>143</sup> Brookfield, above n 38, Preface.

<sup>144</sup> Table 2; Table 3.

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# a guide to journaling

Law 121 – Introduction to Law  
Ideas, suggestions and tips

by sarah hiller and rick snell



## A Guide to Journaling in Law 121

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*Cover illustration – Red 2010 by Peter Hiller*



## **1. THE DIFFERENCE BETWEEN PRIVATE JOURNALING AND SELECTIVE REFLECTIVE JOURNALS IN LAW 121**

A private journal is your own record of private journal writing. What you put into this journal, when you reflect, the journal's format, structure and appearance is entirely your choice and is for your own personal use.

A Selective Reflective Journal is to be assessed. This journal builds upon or is informed by your private journaling but the writing, examples and format is selected or created to satisfy the assessment criteria rubric (attached in this guide). You can incorporate material directly from your private journal or create new material that demonstrates the change in the level and type of critical reflection you have experienced throughout the semester.

## **2. WHY LAW 121 HAS JOURNALS**

### **2.1 TO EMBRACE THE BENEFITS OF JOURNALING**

Luckily one of the most positive aspects of journaling is the freedom to write in your own style, in your own voice, expressing your ideas, thoughts, beliefs and perceptions of your experiences and learning in your own way.

Let's have a look at some of the benefits of journaling before you start planning your journal so you start off on a positive note.

Here is a list with some common positive findings about journaling and its relevance to you as a law student.

### **2.2 HELPING YOURSELF TO LEARN**

- Assists with promotion and development of student-centered learning, active learning and life long learning.
- Enabling connections between the classroom, theory and real life experiences (such as going to court).
- Assists with a more empowering innovative form of assessment, recommended for engaging legal education.
- Some researchers argue that where students reflect it leads to deeper rather than surface learning.
- Studies show that students have a more positive attitude towards journaling the more they practice it.
- Enabling the development of reflective skills needed for professional and personal development.
- Provides a log, e-portfolio or record of skill development.

### **2.3 TRYING A DIFFERENT STYLE**

- The type of writing style can be therapeutic and cathartic and not subject to the constraints of more formal academic writing.
- Some studies show that students generally find journaling a positive experience. Others studies show more varied perceptions. Some students dislike journaling but that has been linked to limited exposure to journaling.

### **2.4 DEVELOPING REFLECTIVE SKILLS NEEDED FOR PROFESSIONAL AND PERSONAL DEVELOPMENT**

- Some theorists maintain reflection is a necessary professional skill assisting with critical thinking and problem solving.
- Journaling can help with professional and personal development.
- It provides a record of some of your experiences and thoughts on the course.
- It can help you identify important professional traits including ethical or unethical behaviour.

### **2.5 PEDAGOGY RECOMMENDED BY THE COUNCIL OF AUSTRALIAN LAW DEANS**

- Moving away from a traditional academic ‘I lecture YOU listen’ approach towards a more student centered learning environment.
- The Australian Council of Law Deans has recommended reflective journals for first year students as part of a scaffolding of innovative teaching techniques in law school curriculums.
- There has been a move away from the teacher centered pedagogy (process of teaching) where the teacher controls the main aspects of the learning to a recognition of the importance of more student focused learning and life long learning (essential to graduate life after university).
- Traditional pedagogy: lectures delivered by lecturer, communication generally one way, a strong reliance on case method and tutorials run by tutor/ teacher who dominate class activity.
- Innovative pedagogy – student-centered and interactive: Law teachers are encouraged to use or encourage various techniques to assist students to more actively engage and learn. In addition to journaling the Australian Council of Law Deans has recommended other reflective exercises, group work, group discussion/ dialogue, blogs, interactive games, debates, role plays, mentoring, study groups AND problem solving.

### 3. TIPS FOR JOURNALING

#### Tips for starting your journal

1. Be prepared, organized and plan ahead with your journaling journey e.g. plan when you are going to complete your journal entries and when you are going to visit court. Start visiting court as soon as possible because term tends to get busier it progresses.
3. Read and adhere to the instructions on journaling provided. Where guidelines are set in relation to a journal they must be followed. For example, sometimes word limits and criteria guidelines are set and need to be followed or academic penalties will apply.
4. Be aware of the common problems with journaling (see below) and have a plan for resolving them should they occur.
5. Decide on how you are going to keep/record your personal journal and how you will present your Reflective Journal (typed or clearly handwritten) and organize your medium.
6. Identify any negative attitudes to writing and where these might have come from may free you from the rules and boundaries inhibiting your writing. Identify previous enjoyable experiences of writing and plan to use the elements of these that make them pleasurable.
7. Establish and create a comfortable environment in which to write and/ or reflect. Some like to reflect whilst relaxing. Sarah likes to reflect whilst jogging and Rick likes to reflect when selling books at Salamanca Market on Saturdays or in the shower.
8. Plan to start simply and set a target of a certain amount of words per day. If you are having trouble with writing you might need to acquire some more knowledge on the topic by reading one or more of the selected readings, looking through your lecture notes or talking to someone with expertise. Try brainstorming a topic using key words or ideas.
9. Try using the reflective model provided for foundation law students (the Hiller reflective model).
10. Practicing reflective writing regularly (e.g after a lecture, tutorial, completing a reading, going to court.)
11. Seek and obtain feedback on some of your reflective writing.
12. Try answering/ reflecting some of the questions, in the appendices, at the end of this guide.

### 3.1 What is academic reflection?

There is not really consensus of how reflection should be done and what it involves. It is agreed it involves critically writing about experiences. Many reflective models, known also as reflective taxonomies, contains common elements such as analysis, evaluation, transformation and critical thinking. These common elements should BE understood before undertaking reflective writing. A criteria rubric will define what is expected of students in terms of reflection. Definitions of relevant terms can be found in general texts on writing at university level, included within the attached references.

It is clear that reflection in the academic sense is different to reflection in its everyday meaning. It is important that you do not merely describe your experiences in LAW 121. Reflection from an academic perspective tends to be more structured and focused.

### 3.2 Hiller Model of Reflection for Foundation Law Students

No dominant reflective model is used in legal education. Hiller has developed a reflective model for LAW 121 students. It includes five phases; the experience, the analysis, the evaluation, the context and the transformation. It is represented in a diagram below at Figure 1. Whilst you do have to follow the criteria rubric you do not have to follow a specific reflective model unless you are required to but models are likely to assist you with your reflections.

#### Phase 1 - The experience: What did you think about the experience?

Experience is an integral component of reflection. Table 1 outlines some examples of experiences, which can be used for foundation law students to reflect on.

**Table 1: Examples of experiences for foundation students**

Areas	Examples of experience categories
Ethics/Professionalism	Court visits, popular culture
Communication Skills	Oral presentations, group work
Student's own learning	Lectures, tutorials, readings, forms of assessment (including journaling itself)

#### Phase 2 -The Analysis: How would you analyse the experience?

Analysis is an important component of high-level thinking, academic writing and reflection. Bulman poses some excellent questions that can be used to assist students' analysis including<sup>1</sup>

- Were peoples' experiences similar or different to yours and in what way?
- What themes tend to be emerging from your analysis?
- How do these compare to your previous experiences?
- Can you challenge any assumptions now?

Such questions could be applied to any of the experiences described in Table 1.

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<sup>1</sup> Chris Bulman and Sue Schutz (eds), *Reflective Practice in Nursing* (Wiley-Blackwell, 5<sup>th</sup> ed, 2013) 233.

### **Phase 3: The evaluation: How would you evaluate the experience(s)?**

Evaluation is also highly regarded as part of academic skills inclusive of reflective skills.<sup>2</sup> Questions relevant to evaluation in this context can include:

- Does the legal system work fairly and ethically?
- How do the component parts of the legal system compare with popular cultural texts or television?
- How do the legal professionals compare in terms of their professionalism in real life as opposed to popular culture?

### **Phase 4: The context: How does the experience relate to the broader contextual experience?**

The broader context is relevant to reflective models.<sup>3</sup> The broader context include factors such as social, cultural, political, historical and gendered contexts. Questions relating to this include:

- Who asserts power in the court? Why is this the case?
- Is the system political?
- What is the culture of the law school classroom? Why?
- Are you empowered as a student? If so, why?

### **Phase 5 -The transformation: What have you learned from the experience that will influence and change your behaviour?**

Transformation is an important part of critically reviewing and reflecting about aspects of learning experiences.<sup>4</sup> Questions for students on transformation in this context include:

- How have you transformed your views or values about the legal profession?
- What are you going to do differently as a student as a result of your experiences?
- Why is this important?

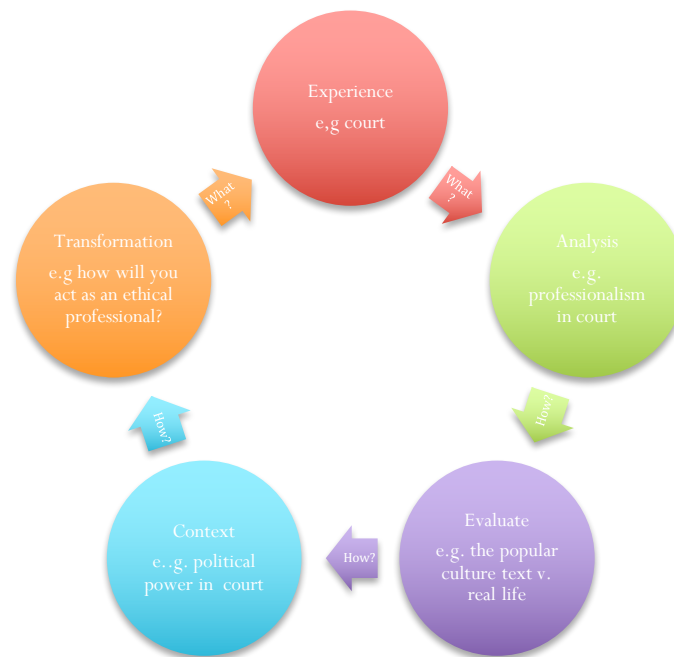
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<sup>2</sup> Stella Cottrell, *Critical Thinking Skills – Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011); Benjamin Bloom, *Taxonomy of Educational Objectives* (Longmans-Green, 1956); Bulman and Schutz, above n 1.

<sup>3</sup> Bloom, above 2; David Bould and D Walker, 'Promoting Reflection in Professional Courses: the Challenge of Context' (1998) 23(2) *Studies in Higher Education* 191-206; G Gulwadi, G, 'Using Reflective Journals In A Sustainable Design Studio' (2009) 10(2) *International Journal of Sustainability in Higher Education* 96-106; Neville Hatton and David Smith, 'Reflection in Teacher Education: Towards Definition and Implementation' (1995) 11 *Teaching and Teacher Education* 33-49; A Macduff, 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2006) 14(4) *Legal Education Digest* 22; Mark Minott, 'Valli's Typology of Reflection And Analysis of Pre-Service Teachers' Reflective Journals' (2008) 33 (5) *Australian Journal of Teacher Education* 55-65; Jayson Seaman, Jayson, 'Experience, Reflect, Critique: The End of the Learning Cycle Era' (2008) 31(1) *The Journal of Experiential Education* 3-18; Linda Valli 'Listening to Other Voices: A Description of Teacher Reflection in the United States' (1997) 72 *Peabody Journal of Education* 67-88.

<sup>4</sup> Moon in Terry King, 'Development of Student Skills in Reflective Writing' Improving the Quality of Reflective Writing' < [http://www.osds.uwa.edu.au/data/page/37666/Terry King doc](http://www.osds.uwa.edu.au/data/page/37666/Terry%20King%20doc%3E)>; Karen Hinnett and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002).

**Figure 1- Hiller's model of legal reflection for foundation law students (adapted from Waye & Faulkner (2011) and Bulman (2013)).**



#### 4. OTHER ADVICE

##### 1. Writing.

If you are having trouble with writing, try using a voice or style you like or admire. It might be that you choose a voice similar to your e-mails, blogs or diary entries or the voice of a favourite author. There is no harm in trying different styles or approaches. It may take you the whole semester to decide the style and tone of your final Selective Reflective Journal.

Try following a reflective model such as the one developed by Hiller (above).

##### 2. Finding time to journal.

Set aside some time after each major event or activity (lecture, movie etc) either immediately afterwards or a few hours to reflect. Allocate time once a week to reflect on the week. Time spent on the journal can often lead to more efficient approaches to study or reduce time taken to cope with feelings of stress, pressure or frustration.

##### 3. What material to include

For a start, given we are talking law it would be sensible to look through your law lecture notes tutorial topics and the Law in the News collection. When you do any other work (including going to court, watching law movies, reading law material, talking with family and/or friends) see if you can make any links between what you know, what you have learned and what you are learning.

#### **4. Reflecting.**

There is not really consensus of how this is done and what it involves. Your lecturers and tutor will give you some different models of reflection to think about. Some examples of descriptive writing and reflective writing will be provided.

#### **5. Links between theory and practice.**

Try and determine what the important messages of the lectures were. If one message was that lawyers can face ethical dilemmas or fail to be honest and upfront, did you see signs of this in court or in your readings? This may be hard to determine. How did the lawyer act? Why?

#### **6. Negative perceptions of journaling.**

Most of us favour one form of assessment over others. It is sensible to come to the realization that we need to have exposure to a variety of different types of assessment. Again, practice makes perfect and feedback from Law 121 staff will also help.

#### **7. Putting in effort.**

It is important to take pride in any work you do. It is a waste of time handing in work that does not reflect what you can do. We can soon see if you have done a minimum amount with little thought or whether you have put in a great deal of thought and effort into a task. You can avoid keeping a journal and present a rushed effort on the last day of semester but you would simply be denying yourself the benefits and learning experience that comes from journaling.

#### **8. Finding examples of other work.**

Go to the UTA MyLO Law 121 website for examples of previous journals. Additional reading, which includes other examples, is also provided in the reference list at the end of this guide.

#### **9. Learning and Experiential Learning**

If you are interested in some of the theoretical perspectives as to how your learning may be improved through reflection, please also refer to the reference list at the end of this guide. Experiences acquired from observing environments fieldwork, classrooms, hospitals and law courts all provide fantastic material to journal about. In law one way to experience and learn about the legal environment is to go to court and observe what happens and reflect about questions like:

- What happens? Why? When? How?
- Is behaviour appropriate? If so why if not why not?
- Do all seem to be treated equally and respectfully?

Refer also to Appendix 1 for additional questions and the section below on what to do for courtroom journaling.

## **10. Assessment.**

Journal assessment has notable problems, particularly in relation to subjective material. Your assessors have factored this into account and assessment criteria have been carefully selected taking this into account (informed by the research in this area). It is attached to this guide, in Appendix 2.

## **11. The difference between private or personal journaling and selective reflective journaling in academia.**

Be aware that there is a difference between private or personal journaling and the type of selective reflective journal you complete for assessment. The difference lies with the purpose of the journal. In a private or personal journal the aims or purpose of the journal comes from you only e.g. you might aim to capture your memoirs of a fantastic holiday or aim to keep on track with a record of an exercise program completed.

With a selective reflective journal you are still able to write in your own voice and have control over what you write, however, the writing must be selective and reflect the aims and objectives of task set. It is really important to understand the aim or purpose of the exercise. The assessment criterion sets out this out (see attached). Take time to read it carefully.

## **5. COMMON QUESTIONS AND SUGGESTED ANSWERS**

From the studies and from Law 121 student experiences since 2007 a few common questions arise. Here are some common ones and some answers to them. Take the time to scan these just in case one or more of them become an issue for you.

### **5.1 List of common questions**

- How often do I journal?
- What structure, format and style should it take?
- Can I identify people in the journal?
- Does it have to be typed or can it be handwritten?
- How critical can I be in my journal?
- Will my journal be kept private?
- Can I work in a group?
- I am not sure whether what I have done is ok?
- How can I get feedback on what I have done?
- Can I be creative?
- What have others done to be creative?
- Can I use the journal to personally attack others or the course or comments that may be seen inappropriate comments?



## **Answers to common questions**

### **How often do I journal?**

It is recommended that you practice as frequently as you are able after a significant event. This might be a court visit, a lecture, tutorial, after completing an interesting law reading or after seeing a movie (obviously with a legal theme) or after a discussion with a friend or family member.

### **What structure, format and style should it take?**

The structure needs to be based on the aims/purposes of the journal- so the content fulfils this. The format and style is up to you. Examples of these kinds of attributes are included in the examples at the end of this guide.

### **Can I identify people in the journal?**

Generally no but if concerned discuss with your teacher.

### **Does it have to be typed or handwritten?**

You can chose. You get to amend type written scripts more easily but handwritten works are a more traditional form of journaling. Nearly all the Selective Reflective Journals since 2007 have been typed.

### **How critical can I be?**

We want you to show critical analysis. You can be as constructively critical as you like (provide of course you give reasons for this) but always remember that one day you will be practicing or teaching. Remember that teachers, tutors, lawyers, judges, police officers and people attending court are sometimes not at their best. Performances cannot always be flawless or edited/polished like you see in TV programs or the movies. Lawyers can be briefed minutes before court (imagine that and reflect on how you might perform in such circumstances). Remember the level of expertise you have part way into first year level of an undergraduate degree. Remember issues of confidentiality and anonymity.

### **Will my journal be kept private?**

Your private journal is totally in your control and nothing in it needs to be shared or revealed. Your Selective Reflective Journal will not be shared unless you have given your permission for it to be shared. Your Selective Reflective Journal will be marked by one or more staff so only include information, insights or reflections you are comfortable to share. Permission may be sought to use part of your Selective Reflective Journal for research.

### **Can I work in a group?**

It is a great idea to go to court together as a group (or to have a movie night with a group of other students) and then make time to have some discussions about what happened in class, at court or in a tutorial (even if it is over coffee) or about different interpretations of a book or movie but your journal is your own and not a group journal.

**I am not sure whether what I have done is ok? How can I get feedback on what I have done?**

There is a great deal of flexibility allowed with journaling. If you have a reason for your approach or inclusion in the Selective Reflective Journal, then this will generally be fine. There are a wide range of examples on MyLO including in terms of format, approach, structure, tone and approach. There will be opportunities to discuss your journals in tutorials. You can also discuss how to approach your Selective Reflective Journal with classmates or other more experienced law students.

**Can I be creative?**

Yes. There are no extra marks for innovative approaches to journaling but these approaches can sometimes add a powerful element to your reflection. We have received paintings, music CDs, poetry, cartoons and short movies as part of a journal submission. However what is assessed is the depth and type of reflection demonstrated not the type of medium (or skill in using that medium) that is assessed. Other aspects of assessment are provided in the assessment criterion sheet.

**Can I use the journal to be critical of the course, my instructors or society?**

Yes. However do it constructively with evidence, in a way that demonstrates your level and degree of reflection. Try to avoid being judgmental of people from different backgrounds to you (schools, socio-economic status, gender, ethnicity, religion, suburbs or lifestyles). Don't hesitate to reflect on and critically discuss those different backgrounds and their relationship (if any) to the law or the legal system but do it professionally and respectfully.



## 6. BE AWARE OF TRAPS OR PROBLEMS

Interestingly, studies do reveal that journals are not without their problems.

### List of Common problems:

- Writing-finding a voice or style
- Finding time to journal
- What material to include
- How to reflect and understanding the difference between description and reflection
- How to link concepts from the course with one's experiences or observation
- Having negative perceptions
- Putting in little effort
- Finding examples of similar writing
- Understanding how the journal can help with my learning
- Understanding how one's thoughts and perceptions can be assessed

## 7. GUIDE FOR COURT ATTENDANCE

You are required to attend court at least twice for the purpose of reflecting about the experiences in your journal. You should be able to develop links between what you observe and what you are required to journal about on the criteria rubric.

You are responsible to make your own arrangements to attend court. The Law School will not do this for you. You must schedule this into your timetable in advance. You should not leave this to last minute, as you will be likely to run out of time.

### *Before attending*

- Check the daily newspapers for the Law List showing which cases are on in the Supreme Court
- You may either attend the Magistrates Court, Federal Court or the Supreme Court. It is a good idea to attend different court so you can evaluate the similarities and differences.
- Check the court websites for additional information.
- It needs to be open court to observe (most cases are).
- Allow plenty of time for attending.
- Try to attend at the beginning of a session and stay for the whole session.
- Remember to adhere to court rules and etiquette. You must look up court etiquette on the relevant court website and comply with that etiquette whilst attending court.

### *In the Court Building and courtroom*

- Do not talk unless it is absolutely necessary and do so quietly.
- Be professional, polite and respectful.
- Use listening skills.
- Turn off your mobile phone.
- Do not take a computer with you to court.
- Take notes.
- Go with fellow students if possible so you can discuss the events between yourselves afterwards.
- Be prepared to go through security (so do not take dangerous or prohibited items in).
- Bow as you enter the court room- if you wish (sign of respect for the law).
- Be guided by and follow the directions of the judiciary and court staff.



### *After attending*

- Talk to your friends about what happened but try to do this in a more private area (e.g. university learning hub, quietly over coffee as opposed to the court room foyer). Be aware whilst in court and elsewhere that family and friends of those appearing in court may be in close vicinity.
- Topics to discuss could include
  - professional behaviours,
  - the role of counsel
  - the role and demeanor of the Judge or Magistrate
  - the court room setting
  - the delivery of justice, equity, access to lawyers etc
  - whether the session confirmed your perspectives of a court room or changed your perspectives
  - How close or far was it from the portrayals in fiction or on Boston Legal?
- Write about your experiences in your journal as soon as you are able.
- If you are confused about aspects of proceedings, ask your lecturer/ tutor.
- Talk to court staff to see if the Magistrate or Judge is able to talk to you about the session (yes it is part of their community education role but do it politely and be aware they may be pressed for time - the Supreme Court may even offers court tours.)
- Go as often as you are able, the more experiences you have the more you are likely to learn about those experiences

## APPENDIX 1 QUESTIONS TO HELP WITH JOURNALING

Why did I take an interest in law?

What values are important to me?

What values is the legal system meant to uphold?

What does professionalism mean?

What qualities does a lawyer need to have? Why?

What is ethical behaviour? Are there differing perceptions of what ethical behaviour is? Why?

What values are important to uphold with ethical behaviour?

Do values change?

What legal issues are important to me?

What did you see in court?

Does the legal system live up to your expectations? Why? Why not?

What are your expectations based on?

Are the professionals in court acting professionally? Ethically?

Was anyone wasting court time/ overcharging or poorly representing their client/ not getting adequate access to justice?

Has the court experience transformed your thoughts in anyway? How? Why do you think this is the case?

What lectures have interested me the most? Why?

What reactions have I had to the topics in the lectures or seminars?

How do I like the format of the teaching and learning activities?

What have I recognised about my own learning?

What have I learned in the course?

How does what I have learned relate to my other experiences?

What implications does it have for my learning?

What did I do in class today?

What teaching strategy was used?

What do I find difficult to understand or accept?

How might I improve my understanding?



## APPENDIX 2 JOURNAL CRITERIA RUBRIC

Student name				Student number	
Reflective Journal					Assessment 10 %
	HD	DN	CR	PP	NN
	In your journal entry, you:	In your journal entry, you:	In your journal entry, you:	In your journal entry, you:	In your journal entry, you:
<b>1.Communication Skills</b> 1.1 To develop your own voice/style to effectively communicate and present your perspective <b>Weighting 20%</b>	Consistently communicate/ present in an extremely effective voice/ style	Predominantly communicate/ present in a very effective voice/style	Communicate/present in an effective voice/ style	Communicate/present your own voice/style	Do not use or develop communication of your own voice/ perspective
<b>2. Identify experiences &amp; understanding of relevant aspects of the legal system ( use 1 or more of the following):</b> -Equality and access to the legal system -Behaviour and professionalism of legal actors such as judges, juries, and lawyers -Roles and responsibilities of the legal profession <b>Weighting 10%</b>	Identify and explain emerging professional themes and support them with relevant and convincing evidence	Identify and explain emerging professional themes and support these with relevant evidence	Identify and explain emerging professional themes and support these with mostly relevant evidence	Identify and explain emerging professional themes	Fail to identify, explain or provide evidence of any professional themes.

<b>3. Identify experiences &amp; understanding of aspects of your learning (1 or more of the following):</b> What works for you in relation to your learning Limitations to your learning Learning in the LAW 121 environment <b>Weighting 10%</b>	Address the criteria extremely well	Address the criteria very well	Reasonably address the criteria	Partly address the criteria	Fail to address the criteria
<b>5. Evaluation of aspects of the legal system and your learning</b> <b>Weighting 20%</b>	Perceptive evaluation of aspects of the legal system covered together with perceptive and insightful evaluation of your own learning, covered and developed on a very regular basis.	Revisiting, evaluation of aspects of the legal system & your own learning, covered on a regular basis.	A combination of some evaluation of aspects of the legal system and some descriptive narrative, covered on a regular basis.	Provided mostly descriptive narratives that focused on basic observations of the legal system and your learning, covered on a regular basis	Provided mostly descriptive narratives that focused on basic observations of the legal system and your learning, covered briefly.
<b>6. Contextualise the broader aspects of the legal system and your learning in terms of power and influence</b> <b>Weighting 10%</b>	Perceptive contextualisation	Very good contextualisation	.Good contextualisation	Some contextualisation	No contextualisation

<b>7. Reflection on transformative behaviour, self- change and reform</b> <b>Weighting 10%</b>	Deep and critical reflection about challenges to your practice, habits and beliefs.	Critical reflection on challenges to your practice, habits and beliefs.	Moderate reflection on challenges to your practice, habits and beliefs.	Simple assertions that you do not need to be challenged or changed in relation to your practice, habits and beliefs.	No comments on your practice, habits and beliefs.
Comments		Grade			



### APPENDIX 3 EXAMPLES OF REFLECTIVE WRITING

1. Reflective Narratives<sup>5</sup> - journal entries reflecting on learning in law
2. Reflections on court experiences and aspects of legal knowledge
3. The experience of the student in law school – Identification of themes from 1970- 1985 in the USA
4. The limitations of the legal system
5. Ideas on professionalism and roles
6. Examples of UTAS Selective Reflective Journals for Law 121
  - 6.1 On Court
  - 6.2 On Lawyers, the Legal Profession and Legal Education
  - 6.3 On Learning
  - 6.4 On Tutorials
  - 6.5 Reflections on previous experiences of law and newly formed ones
7. Legal Poetry
8. Suggested Tasks- activities for study groups or individuals

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<sup>5</sup> Patricia Easteal, 'The Teaching about the nexus between law and society: from Pedagogy to Andragogy' (2008)18 *Legal Education Review*, 163-177, 174.

## 1. Reflective Narratives<sup>6</sup> - journal entries reflecting on learning in law

*'For the first time in my studies I actually found that I was seeking further knowledge on topics, not to complete an assignment, but due to a genuine interest in the topics'.<sup>7</sup>*

*'By allowing students to submit responses to legal problems in assignments outside the traditional essay form, [the lecturer] has enabled me to use political satire to examine the social dimensions and practical effects of cases and legislation. [The lecturer] has also encouraged me to question the legal system, and look for avenues for reform.'<sup>8</sup>*

*'[The lecturer's] interest and enthusiasm is reflected in the way [the lecturer] provides feedback and advice... [The lecturer's] feedback has always been constructive and informative as well as based on a sound knowledge of [the lecturer's] subject'<sup>9</sup>*

*I think that this skills journal has been a good idea. It has helped me reflect upon what I have done and in knowing that it helps motivate me to keep learning and developing skills.<sup>10</sup>*

*With most of the skills that self audit questioned at the start of the semester, I had a reasonable idea of how familiar I was with those skills. However, I did find that I wasn't as good as I first thought with some skills and on the other hand I also found that I was better than I first thought with other skills.<sup>11</sup>*

## 2. Reflections on court experiences and aspects of legal knowledge

*'The judge adjudicated my client as delinquent and decided that he should remain locked up. At this point, my client freaked out and attacked his mother. The guards in the courtroom had to pull him off her. I felt badly for the mom. When the trial was over, the mother was crying and I went up to her and told her how sorry I was for her and that I hoped she would be alright and she screamed at me and told me to get away from her. That made me feel very bad. I wondered if I could handle this type of work. It haunted me for days.'<sup>12</sup>*

## 3. The experience of the student in law school –Identification of themes from 1970-1985 in the USA

*I have a fear of failure and disgust at failure. I had never known failure before my first attempt to get into law school. It was the greatest shock and deepest hurt of my life to be reflected for admission...I still cautiously await new rude awakening that this adventure may hold for me. I have a fear of failure and disgust at failure. I had never known failure before my first attempt to get into law school. It was the greatest shock and deepest hurt of my life to be reflected for admission...I still cautiously await new rude awakening that this adventure may hold for me.<sup>13</sup>*

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<sup>6</sup> Patricia Easteal, 'The Teaching about the nexus between law and society: from Pedagogy to Andragogy' (2008) 18 *Legal Education Review*, 163-177, 174.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid 175.

<sup>10</sup> Sally Kift, 'First Year Renewal to Engage Learners in Law' (Paper presented at the 7 th Pacific Rim, First Year in Higher Education Conference 2003, Brisbane, July 2003) 8.

<sup>11</sup> Ibid.

<sup>12</sup> Harriet Katz, 'Personal Journals in Law School Externship Programs: Improving Pedagogy' (1997) 1 *T.M. Cooley J. PRAC & Clinical L* 7-58, 43.

<sup>13</sup> James Elkins 'Rites de Passage: Law Students "Telling Their Lives"' (1985) 35 *Journal of Legal Education* 27-55, 33, i.

*I have hot flushes of flunking out of school and becoming a homemaker...*<sup>14</sup>

*Law school is one of the most tremendous experiences of my life...I have just completed one week and one day of legal education. I feel that I have absorbed more information this week than in the whole of last year.*<sup>15</sup>

*I have some many thoughts and expressions floating around. I am so excited, challenged by my classes and experiences. I really love what I am doing.. Now I realize what job satisfaction can mean.*<sup>16</sup>

#### **4. Ideas on professionalism and roles**

*In the law office your professional self is on display. I don't see anything wrong with this separation of personal and professional. So what if you have to act sort of phony to get the work done. It's a; part of the game and people have to accept it in order to function.*<sup>17</sup>

*I am a law student during the day. In the evening I am Mommy, and one evening a week a babysitter. On weekends, I am a wife. I am a housewife all the time.*<sup>18</sup>

*I have no trouble switching from one role to another. As a woman I was raised to do this. In law school I am outspoken, aggressive, without worrying about male egos. As a wife I want my marriage to survive, I must be less aggressive and accomplish by goals more subtly. I have no troubleshooting.*<sup>19</sup>

#### **5. The limitations of the legal system**

*The judge was pissed. He said no one should have to put up with this, but the (doctor)kept insisting that she wasn't ready to be transfered to another lower security ward. The (doctor) also said that they couldn't transfer the other patient who was beating up this girl...Finally the judge ordered a full report on these incidents and said he'd hear it next week. Meanwhile the girl was returned back to her ward. It was very upsetting. One the one hand I'm glad the judge was concerned, ... but I can't help but wonder what this girl's going to do this week? Everything is still the same. It was horrible.*<sup>20</sup>

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<sup>14</sup> Elkin, above n, 33, v.

<sup>15</sup> Elkin, above n, 33.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid 46.

<sup>18</sup> Ibid 45.

<sup>19</sup> Ibid.

<sup>20</sup> Harriet Katz, 'Personal Journals in Law School Externship Programs: Improving Pedagogy '(1997) 1 *T.M. Cooley J. PRAC & Clinical L* 7-58., 44.

## 6. Examples from UTAS Selective Reflective Journals for Law 121

### 6.1 On the courts

#### Magistrates Court

*The magistrate's court was very interesting experience. I was surprised by its informality and the high turnover of cases. What also surprised me was that while the defendants' lawyers were actively defending their clients, the prosecutor was browsing through his papers and didn't seem to be taking any interest in the proceedings. It opened my eyes to the role of the prosecutor in the magistrate's court, which I thought would have been more active. We also sat in on a trial in the magistrate's court, it was in relation to an assault matter and the man was defending himself. He appeared to come from a low-socioeconomic background (like most throughout the courts) and was obviously having difficulty defending himself and understanding the proceedings. The magistrate was excellent at helping the defendant understanding the proceedings. Though, I didn't think that he should have been able to represent himself as it was unfair to him and placed further pressure on the magistrate. Overall the magistrate's court was an informative experience on the role of officers of the court and the amount of cases they turn over in such a short period of time. It made me think about what society could be doing to reduce the amount of economically disadvantaged people being brought into the court and prison system.*

#### Supreme Court

*I enjoyed the Supreme Court a lot more than the magistrate's court. It was a lot more formal and it was easier to understand the proceedings because they moved a bit more slowly. I went twice and watched an hour and half of a trial and about an hour of an appeal. During the trial we watched the examination of a police witness, which was very slow and stunted. This was mainly due to showing altered evidence around the court between the jurors, judge and counsel. The appeal was really interesting; we watched the end of the defenses' argument and the judgment. The judges presiding over the appeal were Justices Alan Blow and Shan Tennant and Chief Justice Peter Underwood. It was exciting to see some of Tasmania's best Justices presiding over a case, especially Justice Underwood. He seems like such an intriguing, intellectual man, I would love to see him as a lecturer or at a seminar I think it would be very interesting.*

*The justices seem to be a lot more traditional than the magistrates, particularly in their dress code. While the justices wore their red and white robes the magistrates dressed casually, some not even in suits. Also the lawyers in the Supreme Court dressed more traditionally in wigs and black robes, compared to their counterparts in the magistrate's court who wore suits. I think that it was the traditional, conservative and formal approach of the Supreme Court which I enjoyed, compared to the magistrate's court which was very informal.*

First visit to court. *Before today, I have never visited the court, so it was interesting to see "how it works". I went to the Magistrates Court, and watched the afternoon cases. I would be lying if I said I understood everything, but what I did find was interesting to see the relationships within the court room; for example, between the magistrate and the defendants, the lawyers etc... I saw the critical need for organisation in the legal profession as the lawyer defending a man who had an accident when driving over the legal blood alcohol limit was not prepared, and as a result he frustrated the magistrate and wasted a lot of time. I now also understand the large range of people which the court services; the difference in socio-economic backgrounds was incredibly obvious. A lady charged with assault and trespassing did not have a lawyer, turned up in her tracksuit and constantly interrupted the procedure. Opposing this, there was a young man who would have been close to my age was dressed in a suit and followed his lawyer into the court.*

*I think that the point I am trying to make, perhaps in a non-articulate way, is the diversity within the Australian legal system. From my brief 2 hours in the court room today, I definitely caught a glimpse of this. I think that what I have taken away from my first court room experience is not just an understanding of where my legal knowledge and degree may take me, its why. Why is it so diverse? What impact does this perceived diversity have upon our courts? I think it is a good thing. It proves that all sections of our community should have access to the courts, to justice and the critical need for this.*

## **6.2 On Lawyers, the Legal Profession and Legal Education**

*When I found out lawyers, the legal profession and legal education was part of the course and 4 lectures would be dedicated to this, I thought, "What's the point of learning changing roles in legal profession and legal education?" It was more like a bit of my legal education was going to be wasted on "this" learning. However the first lecture on this topic, lawyers, made me realise maybe I wasn't all cut up for being a lawyer. I wasn't going to become a Hilary Clinton. The instant thought: "Why am I studying law? I'm already doing an overload. There's no point. Maybe I should drop it?"*

*We then went to discuss more on lawyers and the lecturer had found an article, "Law & (the new) order", and from this I learnt how demand for employees with a law degree background by employers, were on the up and up. This helped cast a positive light on why I would continue with my law studies and gain the extra knowledge, research and communication skills. On the completion of my degree I suspect I will fall in the category of the 50% of law students who will choose a different career path for my passion indeed lies elsewhere.*

*My generation is used to society changing rapidly, especially technology-wise. I've easily become accustomed to better technology that comes out within a short time period, the many upgrades and updates. However it has never occurred to me how this change is going to influence lawyers, the legal profession and legal education. Honestly, I never gave a moments thought until I had to write the third essay. This was a new topic for me and has dispelled much of my initial cynicism as to whether it could have been a topic to begin with. I have come to appreciate it as one of my favourite topics, probably because it is a current problem not just in Australia but globally and I will be able to witness through this transitional period of "what should be happening?" and "what will be happening?"*

*Before these lectures, I didn't realise the profession was moving towards a more commercial approach which is now a statement I agree with (after the lectures and reading stacks of printed notes)!!! And in this light I feel the legal profession should try and attain a balance of professionalism and commercialism because, if society is moving towards that trend of commercialism, the legal profession needs to accommodate for society's needs. Never the less it is still important that legal professionalism is not entirely eroded for historical reasons, ethics, justice and so forth.*

## **6.3 On Learning**

*I wasn't really sure what to expect from introduction to law this semester. Before I started, I thought I knew a bit about the law. I soon found out I didn't really know much at all. I was surprised to find out how much there is to know. How much preparation goes into a case, how much legislation there are and how many different areas of law there are to study. There are so many areas of law that I never even thought of going into but it encouraged me to look at different aspects and career outcomes of a law degree other than becoming a lawyer. There are many things that I could have commented on as I reflect on my journey in law this year so far. But as I look back, these are the things (above) that affected my journey the most. I am sure as time goes by they will change. I am not sure yet where I really want to end up with my degree, I guess as the time goes by I will eventually decide exactly what I want to do, but at this stage I am quite happy to learn as much as I can and see where the road to law takes me.*

## 6.4 On Tutorials

*The feelings I had walking into my first tutorial were much the same as the first lecture, only worse. I was confined in a small space, with a small group of people I didn't know and I had absolutely nothing intelligent to say. ... , my tutor, was extremely friendly however and unlike what I expected, and I soon came to feel at ease in the tutorial environment. I also made a friend and began to know people in my tutorial through group work. In the first few weeks, actually the first half of semester I didn't contribute much to class discussions, only when called upon. However, I began to realise that no one judges you ... was always encouraging and never openly said anyone was wrong. I therefore, began to make small comments and then found I was actively participating in class discussions and debates. This was the biggest personal development I made during the semester in any of my courses and I owe it to the friendly environment of the tutorial and the inclusive discussion style in which ... conducted the tutorials. I found that preparing the work for tutorial though sometimes a chore in the end aided my understanding of the course content. I believe the law tutorial was the best out of all of my courses and I think this is due to the fact each tutorial was based on the content covered in lectures and encouraged us as students to form opinions and ideas around the content. The tutorials also taught us in simplistic terms what the lecture was essentially about and enabled me as a student with no legal studies, to grasp concepts. The tutorials were also helpful when it came to assignments. I am a self confessed waffler and the three hundred word count was difficult for me to deal with. I was left disheartened after receiving only a pass for my first assignment due to doing nearly everything wrong. After going through the assignments in the tutorial and again with Simone I was able to pull my mark up to a credit in the next assignment and I was able to practise being concise and to the point with only a five hundred-word limit. I also learnt how to sort the important 'stuff' from the maybe not so important 'stuff' and this is a useful tool in any subject, so I found this very helpful.*

## 6.5 Reflections on previous experiences of law and newly formed ones

*This reflection has been compiled from rough notes and observations made over the past thirteen weeks of semester one. After re-reading these, I have noticed that two general "realisations" have dominated my reflections. They have been, the difference between my perception of legal professionals and the reality, and the idea that the law is fundamentally a profession that serves society. Until starting Intro to Law this year, I had quite a distorted idea of legal practise. I assumed it was reserved for corporate board rooms in Sydney, and undertaken by lawyers who could easily pass as Australia's answer to CJ Cregg ("The West Wing"). For me, legal practise was something that seemed to take place in a vacuum and importantly, those who were at the centre of it such as lawyers and magistrates were far removed from "ordinary citizens." Indeed, over the past thirteen weeks I have come to accept that many lawyers and others involved in legal practise are placed a privileged position in society. However, my limited experience of legal training (involving lectures, assignments and visiting the magistrates court), has reinforced my view that the law takes place in a social context. I have realised that the law has a practical and influential role in people's lives and that in modern society, the "elitist" perception of lawyers is (in most cases) far from the reality.*

## 7. Poetry<sup>21</sup>

### The Old Farmhouse

Twas night time in the country  
And all through the farmhouse,  
Not a creature was stirring  
Except Katko, the louse.  
All the windows were boarded  
With precision and care,  
In hopes that all criminals  
Would keep away from there.  
Then inside the house  
There arose such a clatter,  
Katko looked at his feet  
To see what was the matter.  
And what to his wondering eyes  
should appear?  
But a gaping hole in his shin  
And with no doctor near.  
"I've been shot? I've been shot!  
Oh, this must be a tort!  
I will sue the old couple,  
I will take them to court!"  
From the high court of Iowa  
The edict came down,  
All the neighbors were shocked  
In the small farming town.  
The Brineys had lost,  
Their farm had to be sold.  
Katko was the winner,  
A criminal-brazen and bold!  
Deadly force is not right  
Just to protect your land,  
A life is more important,  
The high court took this stand.  
So protect your home well,  
You do have that right,  
But you must sleep in the house  
To shoot someone at night!<sup>22</sup>

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<sup>21</sup> Here is an example of a poem from a USA torts class cited in Nancy Levit, 'Legal Storytelling: The Theory and the Practice-Reflective Writing Across the Curriculum' (2009) *The Journal of the Legal Writing Institute* 15, 253-277, 264.

<sup>22</sup> Levit, above n 21, 265-266. The poem was written by one of Mc Clurg's students, Laurie Peterson.

## **8. Suggested Practice Tasks**

### **Activity One**

This one can be done in a group or individually.

#### **Aims**

- 1) To examine and evaluate reflective writing
- 2) To practice your own reflective writing

#### **Method**

- 1) Read some of the examples of reflective writing from a critical perspective.
- 2) What do you think that the writer is trying to say?
  - Does the writer do it well?
  - How could the work be improved?
  - Which entry do you like the best?
  - Why?
- 3) Discuss your findings in a study group (only if you are comfortable with sharing). Share ideas. Ask each other for feedback.
- 4) Practice your own reflective writing. Use the questions in Appendix 1 for guidance.
- 5) Ask your lecturer or tutor for feedback

#### **Other activities**

- 1) Choose one of the examples from above and re-write it from someone else's perspective e.g. the judge in a case, the client or present it on a video as a journalist (try photo booth on your computer OR a memo function on your phone).
- 2) Choose one of the examples from above and think about how you might react in a similar situation. Discuss it or write about it
- 3) If you have identified one area of your learning which needs developing devise a plan for such development include identification of the area, whether or not you need to seek expert assistance (and if so where you might find it) or whether you need to do more reading on the topic or whether you simply need more practice.
- 4) Debate a point from one of the examples with another student.



## Helpful Readings

The following readings have been selected for foundation law students to help assist with academic writing. They are not compulsory but highly recommended, particularly those with the asterix\*

### General Assistance with Student Learning, Academic Writing and Reflection

<http://www.utas.edu.au/student-learning/learning-resources>.

\*Chapter 12: Critical Reflection in Cottrell, Stella, *Critical Thinking Skills – Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011)

Cottrell, Stella, *Study Skills* (Palgrave Macmillan, 4<sup>th</sup> ed, 2013)

### Differences between descriptive writing and other forms of critically reflective writing

Bould, David and D Walker, 'Promoting Reflection in Professional Courses: the Challenge of Context' (1998) 23(2) *Studies in Higher Education* 191-206.

\*Hatton, N and David Smith, 'Reflection in Teacher Education: Towards Definition and Implementation' (1995) 11 *Teaching and Teacher Education* 33-49.

Kember, David, Alice Jones, Alice Loke, Jan McKay, Kit Sinclair, Harrison Tse, Celia Webb, Frances Wong, Marian Wong and Ella Yeung, 'Determining The Level of Reflective Thinking from Students' Written Journals using a Coding Scheme Based on the Work of Mezirow' (1999) 18 (1) *International Journal of Lifelong Education* 18-30

### General Text on Legal Education

\*Chapter in Kift, Sally, Michelle Sampson, Jill Cowley, Penelope Watsons (Eds), *Excellence and Innovations in Legal Education* (Lexis Nexis, 2011).

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- Beveridge, Ian, 'Teaching your Students to Think Reflectively: The Case for Reflective Journals' (1997) 2(1) *Teaching in Higher Education* 33-43
- Bloom, Benjamin, *Taxonomy of Educational Objectives* (Longmans-Green, 1956)
- Bould, D and D Walker, 'Promoting Reflection in Professional Courses: the Challenge of Context' (1998) 23(2) *Studies in Higher Education* 191-206
- Bulman, Chris and Sharon Schultz, *Reflective Practice in Nursing* (Oxford, Blackwell Publishing, 2008)
- Bulman, Chris and Sue Schutz (eds), *Reflective Practice in Nursing* (Wiley-Blackwell, 5<sup>th</sup> ed, 2013)
- Cottrell, Stella, *Critical Thinking Skills – Developing Effective Analysis and Argument* (Palgrave Macmillan, 2<sup>nd</sup> ed, 2011)
- Dymont, Janet and Timothy O'Connell, 'The Quality and Reflection in Student Journal: A Review of Limiting and Enabling Factors' (2010) 35 *Innovative Higher Education* 233-244
- Guerra, MD 'Student Self-Assessment Book (SAB): Reflective Thinking and Journaling in Law School' (Spring 2010) *The Law Teacher* 6-8
- Gulwadi, G, 'Using Reflective Journals In A Sustainable Design Studio' (2009) 10(2) *International Journal of Sustainability in Higher Education* 96-106
- Haigh, Martin, 'Constructing Gaia: Using Journals to Foster Reflective Learning' (2001) 25(2) *Journal of Geography in Higher Education* 167-189
- Hatton, N and David Smith, 'Reflection in Teacher Education: Towards Definition and Implementation' (1995) 11 *Teaching and Teacher Education* 33-49
- Hinnett, K and Tracey Varnava (eds), *Developing Reflective Practice In Legal Education* (UK Centre for Legal Education, 2002)
- Hutchinson, T and N Cuffe, 'Legal Research Project Management: Skills Extension for Upper Level Law Students' (2004) 38(2) *Law Teacher* 159-181
- Hume, Anne, 'Promoting Higher Levels of Reflective Writing in Student Journals' (2009) 28 (3) *Higher Education Research & Development* 247-260
- Katz, HN, 'Personal Journals in Law School Externship Programs: Improving Pedagogy' (1997) 1 *T.M. Cooley J. PRAC & Clinical L* 7-58
- King, Terry 'Development of Student Skills in Reflective Writing' Improving the Quality of Reflective Writing' < [http://www.osds.uwa.edu.au/data/page/37666/Terry King doc](http://www.osds.uwa.edu.au/data/page/37666/Terry%20King%20doc%202) >

Macduff, A 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2006) 14(4) *Legal Education Digest* 22

Minott, M, 'Valli's Typology of Reflection And Analysis of Pre-Service Teachers' Reflective Journals' (2008) 33 (5) *Australian Journal of Teacher Education* 55-65

Murray, Susan, 'The Benefits of Journaling: "Stories are Medicine" "Art is Medicine"' (1997) 32 (5) *Parks & Recreation* 68-74

Owen, Suzanne and Gary Davis 'Learning and Teaching in the Discipline of Law: Achieving And Sustaining Excellence In A Changed And Changing Environment' (Australian Learning and Teaching Council, 2009)

Pavlovich, Kathryn, 'The Development of Reflective Practice through Student Journals' (2007) 26 (3) *Higher Education Research & Development* 281-295

Seaman, Jayson, 'Experience, Reflect, Critique: The End of the Learning Cycle Era' (2008) 31(1) *The Journal of Experiential Education* 3-18

Valli, Linda 'Listening to Other Voices: A Description of Teacher Reflection in the United States' (1997) 72 *Peabody Journal of Education* 67-88

Appendix 2: Copy of the Journal Criteria Rubric 2011

Student name				Student number	
Reflective Journal				Assessment: 10%	
	HD	DN	CR	PP	NN
	In your journal entry you:	In your journal entry you:	In your journal entry you:	In your journal entry you:	In your journal entry you:
<b>Communication Skills</b> To develop your own voice/style to effectively communicate your perspective <b>Weighting: 20%</b>	Consistently communicate/ present in an extremely effective voice/ style	Predominantly communicate/ present in a very effective voice/style	Communicate/ present in an effective voice/ style	Communicate/ present in your own voice/ style	Do not use or develop communication of your own voice/ perspective
<b>Identify experiences &amp; understanding of relevant aspects of the legal system (use 1 or more of the following):</b> -Equality and access to the legal system -Behaviour and professionalism of the legal actors such as judges, juries and lawyers -Roles and responsibilities of the legal profession <b>Weighting: 10%</b>	Identify and explain emerging professional themes and support them with relevant and convincing evidence	Identify and explain emerging professional themes and support them with relevant evidence	Identify and explain emerging professional themes and support them with mostly relevant evidence	Identify and explain emerging professional themes	Fail to identify, explain or provide evidence of any professional themes
<b>Identify experiences &amp; understanding of relevant aspects of the legal system (use 1 or more of the following):</b> -What works in relation to your learning -Limitations to your learning -Learning in the LAW 121 environment <b>Weighting: 10%</b>	Address the criteria extremely well	Address the criteria very well	Address the criteria	Partly address the criteria	Fail to address the criteria
<b>Evaluation of aspects of the legal system and your learning</b> <b>Weighting: 20%</b>	Perceptive evaluation of the legal system covered with perceptive and insightful evaluation of your own learning, covered and developed on a very regular basis	Revisiting, evaluation of the legal system and your own learning covered on a regular basis	A combination of some evaluation of the legal system and your own learning with some descriptive narrative, covered on a regular basis	Provided mostly descriptive narratives that focused on basic observation on the legal system and your own learning, covered on a regular basis	Provided mostly descriptive narratives that focused on basic observation on the legal system and your own learning, covered briefly
<b>Contextualisation of the broader aspects of the legal system and your learning in terms of power and influence</b> <b>Weighting: 10%</b>	Perceptive contextualisation	Very good contextualisation	Good contextualisation	Some contextualisation	No contextualisation

<b>Reflection on transformative behaviour, self-change and reform</b> <b>Weighting: 10%</b>	Deep and critical reflection about challenges to your practice, habits and beliefs	Critical reflection about challenges to your practice, habits and beliefs	Moderate reflection about challenges to your practice, habits and beliefs	Simple assertions that you do not need to be challenged or changes in relation to your practice, habits and beliefs	No comments on your practice, habits and beliefs
Comments		Grade			